

**PURSUANT TO THE REFERRAL BY THE  
COMMISSIONER OF EDUCATION, STATE OF NEW JERSEY**

<b>IN THE MATTER OF THE TENURE</b>	:	
<b>HEARING OF ANDREW LOTA</b>	:	<b>BEFORE THE COMMISSIONER OF</b>
	:	<b>EDUCATION, STATE OF NEW JERSEY</b>
	:	
<b>BY DOVER SCHOOL DISTRICT, MORRIS COUNTY</b>	:	<b>AGENCY DOCKET NO. 216-10/20</b>
	:	
	:	<b>OPINION AND AWARD</b>

**BEFORE: CAROL F. LASKIN, ESQUIRE, ARBITRATOR**

**APPEARANCES:**

On behalf of Andrew Lota  
 Caruso Smith Picini  
 Nicholas Poberezhsky, Esquire  
 Benjamin Weathers, Esquire

On behalf of Dover School District  
 Adams Gutierrez & Lattiboudere, LLC  
 Adam S. Herman, Esquire

**PROCEDURAL BACKGROUND**

Pursuant to *N.J.S.A.* 18A:6-16, as amended by *P.L. 2012, c. 26* (“TEACHNJ”), tenure charges were brought by the Board of Education, Dover School District, Morris County (“Petitioner”, “District” or “Dover”) against Andrew Lota (“Respondent”, “Lota” or “A.L.”) on August 28, 2020, alleging conduct unbecoming and other just cause.

On or about September 14, 2020, Lota filed a written response. The next day, September 15, 2020, the District voted to certify tenure charges to the Commissioner of Education. Following receipt of Respondent’s answer on October 8, 2020, the Office of Controversies and Disputes reviewed and deemed sufficient the charges, if true, warranted dismissal or reduction in

salary; thereupon referring the matter to me on October 13, 2020, for hearing and decision.

Hearings were conducted via Zoom on November 27, 2020, December 9, 2020, December 18, 2020, December 21, 2020, December 22, 2020, January 5, 2021, January 6, 2021, January 14, 2021, January 30, 2021, January 22, 2021, February 3, 2021 and February 11, 2021. On February 18, 2021, without a court reporter, the admissibility of Exhibits was argued and a briefing schedule determined. Final submissions were received by April 6, 2021, whereupon the record closed.<sup>1</sup>

### **THE TENURE CHARGES**

Dover, asserting Lota is guilty of unbecoming conduct and other just cause, referred four (4) *Sworn Tenure Charges* as follows:

#### **Charge Number One**

- a. At all times relevant, Mr. Lota has been employed by the Board as a teaching staff member.
- b. During the 2019-20 school year, Mr. Lota was assigned to teach 8th grade mathematics.
- c. During the 2019-20 school year, Mr. Lota engaged in a pattern of inappropriate conduct.
- d. Between March 2020 and April 2020, as a result of the COVID-19 pandemic, the District ceased providing in-person instruction and provided remote instruction to its students.
- e. Between March 2020 and April 2020, Mr. Lota provided remote instruction to his students.
- f. Between March 2020 and April 2020, Mr. Lota's remote instruction included electronic communications with his students through email and other electronic means.

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<sup>1</sup>Exhibits shall be referenced as D-District and R-Respondent. The undersigned and the parties were well served by an excellent court reporter for the twelve (12) days of Hearings recorded, pages of which were numbered sequentially from 1 to 1479. Thus, it is unnecessary to burden this Decision with specific dates of testimony. Consequently, the transcript shall be referenced as T followed by page/line.

g. In violation of District policy, District procedure and law, between March 2020 and April 2020, Mr. Lota engaged in a pattern of inappropriate electronic communications with A.N. one of his female 8th grade math students.

h. Between March 2020 and April 2020, Mr. Lota exchanged hundreds of emails with A.N.

i. Between March 2020 and April 2020, Mr. Lota exchanged significantly more emails with A.N. than any other student.

j. Mr. Lota's email communications with A.N. frequently occurred after the conclusion of the school day and/or on weekends.

k. Between March 2020 and April 2020, several of Mr. Lota's emails invited A.N. to individual Google electronic classrooms.

l. Between March 2020 and April 2020, several of Mr. Lota's emails invited A.N. to FaceTime him.

m. Some examples of Mr. Lota's numerous inappropriate emails with A.N. between March 2020 and April 2020 include:

1. On March 19, 2020, Mr. Lota emailed A.N. and told her that:  
"You are so sweet . . ."

2. On March 25, 2020, Mr. Lota emailed A.N. stating:  
"no worries love. . . whenever you can. . ."

3. On March 26, 2020, Mr. Lota emailed A.N. asking:  
". . . are you angry with me?"

4. On March 30, 2020, Mr. Lota emailed A.N. stating:  
"Haven't talked to you much today" and included a sad emoji at the end of the sentence.

5. On March 31, 2020, in the evening between 7:37 p.m. and 8:42 p.m., Mr. Lota engaged A.N. in a series of emails which discussed certain things including his wife and a school assignment.

6. During the email conversation, Mr. Lota told A.N.:  
"lol . . . I truly miss you!"

7. During the same email conversation, when A.N. advised that she would be sending Mr. Lota a picture of the assignment, he responded with

"whenever's convenient dear" along with a smile emoji.

8. Once Mr. Lota received the picture of the assignment, he responded by stating:  
"Yes dear, thank you!"

9. On April 2, 2020, Mr. Lota emailed A.N. and stated:  
"Hello beautiful!"

10. In the same April 2, 2020 email conversation, Mr. Lota stated to A.N. that he was:  
"[s]tuck in exile . . ." and that he was "gonna get out after [his] virtual dept meeting and take [his] boys for a bike ride."

When A.N. asked Mr. Lota to pick her up, Mr. Lota responded by stating that "I'm in a meeting now with my co-workers and supervisor."

11. On April 13, 2020, Mr. Lota communicated with A.N. about a math problem from 9:16 p.m. through 10:21 p.m. During this email exchange, Mr. Lota stated to A.N.:  
"lol . . . you kill me. dont worry anything you do or ask is ok" and ended the sentence with a smile emoji

12. On April 15, 2020, Mr. Lota continuously communicated with A.N. between 1:31 p.m. and 5:47 p.m. During the voluminous email exchange, Mr. Lota stated to A.N.:  
"Anything for you dear" and concluded his statement with a smile emoji.

13. In the same voluminous email trail, Mr. Lota stated to A.N. that she was  
". . . more grown up than [him]."

14. In the same voluminous email conversation, Mr. Lota stated to A.N. that  
"lol . . . just saying that your very mature for your age" and concluded his statement with a smile emoji.

15. On April 18, 2020, which was a Saturday, Mr. Lota engaged in email communications with A.N. between 10:15 p.m. and 11:24 p.m. During the conversation, Mr. Lota stated to A.N.:  
"lol u rock."

16. During the same Saturday evening email conversation, Mr. Lota stated to A.N.:  
" hi Love" with a smile emoji.

17. During the same Saturday evening email conversation, Mr. Lota invited A.N.

to a Google meeting.

18. During the same Saturday evening email conversation, Mr. Lota discussed putting his children to sleep. When A.N. told Mr. Lota that it is nice to put his kids to sleep, Mr. Lota stated: "omg thx" with a smile emoji.

19. During the same Saturday evening email conversation, Mr. Lota stated:  
"[smile emoji] love helping you . . . never a problem."

20. On April 19, 2020, which was a Sunday, Mr. Lota engaged in emails multiple communications with A.N. from 10:19 p.m. through 7:34 p.m.

21. During the Sunday email conversation, at 1:18 p.m., Mr. Lota asked A.N. what time she woke up.

22. During the same Sunday email conversation, Mr. Lota, at 4:34 p.m. stated to A.N. that:

"lol . . . you're a flower" with a smile emoji.

23. During the same Sunday email conversation, Mr. Lota advised A.N. that he was going to send her books in the mail. Mr. Lota stated to A.N.:

i. "ima gonna try to get these books in the mail to you tomorrow. I'm reading the 3<sup>rd</sup> one again, prob for the 10<sup>th</sup> time, now. If you really liked the 2 I introduced you to, You'll love the series."

ii. dude . . . no rush. In fact, take your time and ENJOY them. If your taste in this kind of reading is like I hope, then please take your time with them. The best thing I can do is pass them on without worry of them being brought back."

iii. When Mr. Lota reiterated that A.N. can hold onto the books for as long as necessary, A.N. stated: "ohhh yeahhh hahaha this has to end sooner or later so its all good," In response, Mr. Lota stated: "yes it is" and concluded the sentence with a smile emoji.

24. During the same Sunday email conversation, at 7:22 p.m., Mr. Lota asked A.N. to Facetime him.

25. During the same Sunday evening email conversation, at 7:34 p.m., Mr. Lota invited A.N. to a Google meeting.

26. On April 22, 2020, Mr. Lota emailed A.N. and stated the following:

"Are you ok? How's the toe? Books are on the way. Are you getting my e-mails?"

27. In response to A.N.'s email, A.N. responded:

"I haven't taken the nail out but I'm getting there, and thank god I'm so excited to read them, do you know when they will get here? And no I haven't been getting your emails idk maybe they were saved as drafts."

n. Mr. Lota's email communications with A.N. requested and/or tried to establish a personal relationship with a student beyond his professional responsibilities.

o. Mr. Lota's email communications with A.N. are those type which the Commissioner of Education or an arbitrator would find to be inappropriate in determining that Mr. Lota's is unfit to discharge the duties and functions of his teaching position.

p. Mr. Lota failed to exercise self-restraint and controlled behavior which is required and mandated for a teaching staff member entrusted with the care and custody of students.

q. Mr. Lota's inappropriate and unprofessional conduct placed A.N. at risk of physical and emotional harm.

r. Mr. Lota's inappropriate and unprofessional conduct violates District policy, District procedure and law.

s. Mr. Lota's actions are sufficiently flagrant and egregious to warrant termination.

t. Mr. Lota's actions demonstrate that he is not fit to serve as a teaching staff member.

Mr. Lota's willful misconduct as described above constitutes Conduct Unbecoming sufficient to warrant dismissal from employment and/or reduction in compensation.

### **Charge Number Two**

Mr. Lota is guilty of Conduct Unbecoming by way of the following:

a. The Board repeats and reiterates the allegations set forth above.

b. Mr. Lota attempted to build trust with A.N. to gain access to and time alone with her.

c. Mr. Lota showed favoritism towards A.N.

d. Mr. Lota granted special privileges to A.N.

e. Mr. Lota catered to the interests of A.N.

f. Mr. Lota's behavior with A.N. constitutes grooming.

g. Mr. Lota failed to exercise self-restraint and controlled behavior which is required mandated for a teaching staff member entrusted with the care and custody of students.

h. Mr. Lota's inappropriate and unprofessional conduct placed students in risk of harm.

i. Mr. Lota's inappropriate and unprofessional conduct placed A.N. at risk of physical and emotional harm.

j. Mr. Lota's inappropriate and unprofessional conduct violates District policy, District procedure and law.

k. Mr. Lota's actions are sufficiently flagrant and egregious to warrant termination.

l. Mr. Lota's actions demonstrate that he is not fit to serve as a teaching staff member.

Mr. Lota's willful misconduct as described above constitutes Conduct Unbecoming sufficient to warrant dismissal from employment and/or reduction in compensation.

### **Charge Number Three**

Mr. Lota is guilty of Conduct Unbecoming by way of the following:

a. The Board repeats and reiterates the allegations set forth above.

b. Between March 2020 and April 2020, Mr. Lota engaged in a pattern of inappropriate electronic communications with N.D. one of his female 8th grade math students.

c. Some examples of Mr. Lota's numerous inappropriate emails with N.D. between March 2020 and April 2020 include:

1. On March 25, 2020, Mr. Lota emailed N.D. stating:  
"Thanks love!"

2. On March 25, 2020, Mr. Lota emailed N.D. stating:  
"You're awesome."

3. On April 14, 2020, Mr. Lota emailed N.D. stating:  
". . . no ones better than you love!"

4. On April 15, 2020, Mr. Lota emailed N.D. stating:  
"Thanks dear u are awesome!"

5. On April 16, 2020, Mr. Lota emailed N.D. stating:  
"Thanks . . . you rock Star you!"

6. On April 17, 2020, Mr. Lota emailed N.D. stating:  
“Thanks love. . . You're still awesome!”

7. On April 23, 2020, Mr. Lota emailed N.D. stating:  
“Thanks love” with a concluding smile emoji.

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d. Mr. Lota failed to exercise self-restraint and controlled behavior which is required and mandated for a teaching staff member entrusted with the care and custody of students.

e. Mr. Lota's inappropriate and unprofessional conduct placed students in risk of harm.

f. Mr. Lota's inappropriate and unprofessional conduct placed N.D. at risk of physical and emotional harm.

g. Mr. Lota's inappropriate and unprofessional conduct violates District policy, District procedure and law.

h. Mr. Lota's actions are sufficiently flagrant and egregious to warrant termination.

i. Mr. Lota's actions demonstrate that he is not fit to serve as a teaching staff member.

Mr. Lota's willful misconduct as described above constitutes Conduct Unbecoming sufficient to warrant dismissal from employment and/or reduction in compensation.

#### **Charge Number Four**

Mr. Lota is guilty of Other Just Cause by way of the following:

a. The Board repeats and reiterates the allegations in all the charges set forth above.

b. All of the foregoing Charges, Counts and the facts alleged in the tenure charges are incorporated by reference as if fully set forth herein. The acts of misconduct described above, jointly and severally, demonstrate a series of ongoing infractions over an extended period of time, constituting a pattern of conduct unbecoming and/or other just cause warranting his dismissal and/or reduction in compensation.

#### **DISTRICT POLICIES**

At hearing and through its post hearing submission, Dover presented the following District policies as being specifically relevant to the instant tenure charges:



**“District Policy 3283 - Electronic Communications between Teaching Staff Members and Students (created/edited July 2014)**

The Board of Education recognizes electronic communications and the use of social media outlets create new options for extending and enhancing the educational program of the school district. Electronic communications and the use of social media can help students and teaching staff members communicate...

The Commissioner of Education and arbitrators, appointed by the Commissioner, have determined inappropriate conduct may determine a teaching staff member unfit to discharge the duties and functions of their position. Improper electronic communications by teaching staff members may be determined to be inappropriate conduct.

Inappropriate content of an electronic communication between a teaching staff member and a student includes, but is not limited to:

6. Communications requesting or trying to establish a personal relationship with a student beyond the teaching staff member’s professional responsibilities;
8. Communications between the teaching staff member and a student that the Commissioner of Education or an arbitrator would determine to be inappropriate in determining the teaching staff member is unfit to discharge the duties and functions of their position.”

“The following acceptable protocols for all electronic communications between a teaching staff member and a student shall be followed:

1. E-Mail Electronic Communications Between a Teaching Staff Member and a Student.
  - a. All emails between a teaching staff member and a student must be sent or received through the school district’s email system. The content of all e-mails between a teaching staff member and a student shall be limited to the staff member’s professional responsibilities regarding the student.”... (D- 3)

**District Policy 3281 - Inappropriate Staff Conduct (created/edited June 13, 2013)**

The Board of Education recognizes its responsibility to protect the health, safety and welfare of all students within this school district. Furthermore, the Board recognizes there exists a professional responsibility for all school staff to protect a student’s health, safety and welfare. The Board strongly believes that school staff members have the public’s trust and confidence to protect the well-being of all students attending the school district.

In support of this Board’s strong commitment to the public’s trust and confidence of

school staff, the Board of Education holds all school staff to the highest level of professional responsibility in their conduct with all students. Inappropriate conduct and conduct unbecoming a school staff member will not be tolerated in this school district.

The Board recognizes and appreciates the staff-student professional relationship that exists in a school district's educational environment. This Policy has been developed and adopted by this Board to provide guidance and direction to avoid actual and/or the appearance of inappropriate staff conduct and conduct unbecoming a school staff member toward students.

School staff's conduct in completing their professional responsibilities shall be appropriate at all times. School staff shall not make inappropriate comments to students or about students and shall not engage in inappropriate language or expression in the presence of students. School staff shall not engage in inappropriate conduct toward or with students. School staff shall not engage or seek to be in the presence of a student beyond the staff member's professional responsibilities....

Inappropriate conduct by a school staff member outside their professional responsibilities may be considered conduct unbecoming a staff member.

A school staff member is always expected to maintain a professional relationship with students and to protect the health, safety and welfare of school students. A staff member's conduct will be held to the professional standards established by the New Jersey State Board of Education and the New Jersey Commissioner of Education."  
(D-4)

**District Regulation 3281 - Inappropriate Staff Conduct (created October 2008 and edited February 2012) provides specific definitions and examples of inappropriate staff conduct, including,**

i. 'Inappropriate staff conduct' is any conduct prohibited by this policy and corresponding regulation, including any other conduct deemed by the Commissioner of Education, the State Board of Education, statute, administrative code, and/or judicial case law to be inappropriate conduct and/or conduct unbecoming a school staff member.

ii. 'Inappropriate comments' include, but are not limited to, comments about the staff member's personal life that are not relevant to the professional responsibility of the school staff member, comments of a sexual nature, sexually-oriented humor or language, inappropriate comments about a student's clothing or physical appearance, comments with sexual overtones, or comments regarding a student's dating partner.

iii. 'Inappropriate conduct' includes, but is not limited to, sexual misconduct, a request by a school staff member to a student for a social relationship outside the school staff/student relationship, sexually harassing conduct, inappropriate touching by the staff

member to a student or permitting a student to inappropriately touch a staff member, corporal punishment, requesting a student to expose private parts of their body other than for school medical purposes,....” (D-5)

### **ISSUE PRESENTED**

*Has the Dover School District, Morris County, met its burden of establishing by a preponderance of the credible evidence the tenure charges against Respondent, Andrew Lota?*

*If so, do the tenure charges warrant dismissal or a lesser discipline?* (stipulated at T/5-19 to 6/8)

### **BASIC EVIDENTIARY FINDINGS**

At hearing, the parties were zealously represented. Each was given a full opportunity to present testimony, written evidence, cross-examine witnesses and submit post hearing briefs.

Petitioner Dover proffered:

Dr. James McLaughlin - Superintendent  
Christina Cirigliano - Assistant Superintendent  
Jorden Dane Schiff, Ed.D<sup>2</sup>- School Liability Expert Group:  
Detective Sergeant Oxmani Corona - Dover Police Department  
Police Officer Joe Gotera - Dover Police Department  
Mirian Y. Nieto-Gomez - Mother of A.N. (with assistance by Alex Tarasov, Spanish Interpreter)

And, on Rebuttal-

Aretha Dooley-Malloy - Consultant to Dover: January 20, 2020 to January 30, 2020 -  
Principal East Dover Elementary School and Dover Middle School

Respondent :

Andrew Lota, testified on his own behalf, in addition to:  
Alison Merena - Andrew Lota's Wife  
Kyle Madison - Dover Middle School Social Study Teacher

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<sup>2</sup>On November 2, 2020, Respondent filed a Motion to Suppress the testimony and expert report of Jorden Dane Schiff, Ed.D. On November 13, 2020, the District submitted its opposition. The parties orally argued the motion on a conference call whereupon the undersigned denied the motion, allowing Dr. Schiff to testify and submit his expert report.

Based upon a thorough review of the record, including all admitted exhibits, testimony, admissions, stipulations, arguments and observations of the demeanor of each witness, I *find* the following as basic evidentiary *fact*.<sup>3</sup>

The Dover School District consists of five (5) schools, educating approximately thirty-four hundred (3400) students in Kindergarten through Twelfth grade. (T44/4 to 16). It has been categorized by the New Jersey Department of Education in District Factor Group “A,” the lowest of eight (8) groupings in New Jersey measuring a community’s relative socioeconomic status.

At all times relevant to the instant charges, the administration has been lead by Superintendent Dr. James McLaughlin and Assistant Superintendent Christina Cirigliano. The Dover Middle School, during the 2019-2020 school year, was lead by Interim Principal Aretha Dooley-Malloy, Vice Principal Heather Carlton and Vice Principal Michael McAuley.

Respondent, Andrew Lota, is a tenured eighth grade mathematics teacher who had been assigned to the Dover Middle School for the entirety of his twelve (12) year career with the District. He has no prior disciplinary history nor did he receive a summative evaluation rating less than effective or its equivalent. Lota organized the Dover Middle School’s Chess Club. He also chaperoned school trips and assisted with track meets. (R-5, R-6, T931/24 to 935/14).

### **School Closure March 2020**

After an initial meeting with school administrators, the administrative team determined to transition to remote learning. (T1380/14 to 1381/24, T48/1 to 16) On or about March 12, 2020, the District provided Emergency Closure Planning Guidance, D-9, to all teaching staff members informing of the transition to virtual learning, effective March 16, 2020. Therein, *inter alia*, a

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<sup>3</sup>Controverted evidence will be identified in *Position of the Parties* below.

weekly organization folder was addressed along with instructions on how to record and post video/audio files utilizing Google Classroom.

Once remote virtual learning commenced, middle school administrators and staff held virtual meetings daily. Thereafter, meetings were conducted less frequently.<sup>4</sup> (T1385/24 to 1388/6)

### **Google Suite**

The District utilizes Google Suite as its technical platform. Google Suite includes email, Google Classroom, Google docs, Google sheets, Google slides and Google Meet. (T350/9 - 351/10) With the exception of Google Meet sessions, all other electronic communications on the District's servers were monitored and recorded. Confidentiality laws preclude the District from preserving video or audio recordings of Google Meet sessions. (T536/9 - 19)

Students cannot create a Google meeting link - only administration or teachers. To create a link, an authorized teacher, on his/her calendar, clicks a specific day and time which produces a link the teacher can send to the students through Google Classroom or through the teacher's district website or email. (T352/ to 353/1)

The instant charges are based upon Andrew Lota's utilization of the Google Suite technology, commencing at the initiation of virtual learning on March 16, 2020 until April 22, 2020, when a Gaggle Alert was issued concerning his emails that date with a fifteen (15) year old female, A.N., a high performing math student.

### **Gaggle Alert - April 22, 2020**

Dover records and monitors all emails, utilizing the program "Gaggle", to identify

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<sup>4</sup>The parties differ on their recollection of specific content of these meetings, disclosed in *Position of the Parties* below.

communications indicating potential self-harm, inappropriate language and/or pornographic materials. (T61/5 to 13, D-35) Gaggle, as the early warning monitor program, tags key words sent throughout the school's on-line learning platform.

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On April 22, 2020, Assistant Superintendent Cirigliano received a Gaggle Alert, D-10, of an email trail between Lota and A.N.- twenty-six (26) emails between 11:16 a.m. and 8:33 p.m. The alert was triggered by A.N.'s phrase, "It's okay, I think I will just die." The entirety of April 22, 2020, emails between Lota ("A.L") and A.N., appear, as follows:

11:16 AL to AN:	Are you ok? How's the toe? Books are on the way. Are getting my e-mails?
11:22 AN Response:	I haven't taken the nail out but I'm getting there, and thank god I'm so excited to read them, do you know when they will get here? And no I haven't been getting your emails idk maybe they were saved as drafts.
12:39 AL to AN:	They should be there Friday the latest:)
12:41 AN Response:	Thank you I will definitely read them and enjoy them, and I promise I will take care of
12:52 AL to AN:	The 1 <sup>st</sup> one is eye of the world. It is very important that you read the prologues :) I have all but the 5 <sup>th</sup> one, let me know when you need more and comment on them when you can:)
1:29 AN Response:	Okay I will read the prologue, are they confusing?
1:46 AL to AN:	Not at all, in fact when I read the prologue to the 1 <sup>st</sup> book I knew this would be the best series ever written!
6:55 AN Response:	Really, can't wait to read them especially eye of the world that one sounds amazing. I hope that they're not too hard to understand.
7:21 AL to AN:	omg, if you liked the two other books you read from me, I think you will positively love these books. If you would like, from memory I could give you a small capture of the prologue?

- 7:22 AN Response: Yes, please I would love that
- 7:25 AL to AN: Ok, deep breath. Now remember, after the prologue, This book starts from someplace completely different, but eventually melds with the prologue to become completely awesome. It's not exact, obvious, because its way to you, but here you go..let me know what you think :) ""Lews Therin walked through the halls of his castle. The walls still shook from the horror that struck the floors around it. The walls had rents in them light from outside shone through. Every once in a while the ground itself shook, causing dust to permanently rise through the air. Tables toppled and food and drink on the floor from what had seemed a grand occasion littered the room. "Ilyana, Ilyaya my love, where are you? "He absent mindedly stopped over the dead body of a beautiful blond haired woman whose eyes stared in fixed horror from what she witnessed. Servants, children, friends, all dead filled the room. Lews Therein ignored these as if they weren't there. "Ilyana where are you? You can't hide from me!?" Behind him the air shimmered as if it were alive. The air itself seemed to rip in half, as it was torn fabric, to allow a tall figure to step through. He looked around the room, disgusted at what he saw. He saw Lews Therin and his face became an offended sneer...
- 7:30 AN Response: Wow that was cool, but I'm slightly confused so Lew saw himself?
- 7:36 AL to AN The prologue tells what happened ages ago with less Theron, the dragon to be born. There is more to the prologue, and much better written for the reader to be engaged, confused and able to wait to read on!
- 7:37 AN Response: Oh haha so it's meant for me to be confused okay good
- 7:40 AL to AN: Not necessarily confused, but needing to know more:)
- 7:42 AN Response: Yeahhh I get you like a hook, and okay hahah sounds good I told my mom that I'm expecting some books.
- 7:44 AL to AN: LOL awesome. There is really nothing inappropriate about them, they are considered fantasy fiction, pg at worst. Maybe she would like them :)

7:50 AN Response:	Maybe who would like them?
7:54 AL to AN:	lol, I jokingly meant your mom :) But if you talked to someone about them and they're interested, share :)
<hr/>	
7:55 AN Response:	Omg Mr. Lota my toe hurts sooo muchhhh it's terrible
8:06 AL to AN:	I was hoping it was getting better. Soak the toe, pull that nail out. Better big pain short time than slightly less big pain long time.
8:08 AN Response:	Hahahah mr I think I made it worse for the past days, and it hurts a lot so I put a rubber bands on my toe to cancel most of the pain.
8:16 AL to AN	Have you thought about going to a doctor?
8:21 AN Response:	Yes I have, but my mom won't take me with everything going around she says that all I'm going to do is come back with corona.,
8:28 AL to AN	Maybe you have to have her pull the extra nail out without crying that will make her stop? I don't know, just trying to help. Feel bad :(
8:33 AN Response:	<i>It's okay I think I will just die. (D-10)</i>

Immediately Superintendent Cirigliano communicated with Dr. McLaughlin. They shared concerns; Lota was sending books, there was no mention of math throughout the day, Lota gave medical advice, and emails were exchanged after 8:00 p.m. Principal Dooley-Malloy was informed of the alert. Thereafter, Vice Principal Heather Carlton communicated by cell phone with Lota; whereupon, he confirmed mailing books to A.N. Carlton informed, an investigation would be conducted. (T942/2 to 13).

On Friday, April 24, 2020, Respondent with his Union President, John Coniglio, participated in a Zoom meeting with Dr. McLaughlin. Therein, Lota was notified of his



placement on administrative leave. Consequently, Lota's access to the District's Google Suite technology was revoked. (T1073/24)

## **Investigation**

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### A. Dover Police Department

On April 24, 2020, Dr. McLaughlin also reported to the Dover Police Department his concern of a possible inappropriate relationship between a teacher and student.” (R-4, D-34)

A.N.'s mother was immediately informed about the school's report; an interview was scheduled for her and A.N. to determine whether the child had been “victimized by her teacher in any way.”

A recorded telephone interview was conducted. A.N. revealed three (3) instances where she felt “weird.” (R-4, D-35)

A.N.'s mother consented to provide her daughter's cell phone for review by the Morris County Prosecutor's Office. Detective Sergeant Oxmani Corona, after reviewing the forensic results, closed the case as he “could not locate any evidence of a crime.” (R-4, D-36)

### B. The Institutional Abuse Investigation Unit

The District also notified the New Jersey Department of Children and Families, Institutional Abuse Investigation Unit, as required, to determine whether neglect or abuse occurred.

On December 22, 2020, the Institutional Abuse Investigation Unit reported its findings to Dr. McLaughlin, copied to Respondent's Counsel and the Interim Executive County Superintendent of Schools. After discussion at hearing, a portion of the Finding Report was read into the record by the undersigned,

“Neglect/risk of harm is not established. IAIU has determined, in accordance with NJSA 9:6-8.21 that the child was not abused or neglected by teacher Andrew Lota. However,

some information indicates that the child was harmed or placed at risk of harm.”  
(T1372/19 to 1375/5)

### **Respondent’s Utilization of Google Suites With Students Between March 16 and April 22, 2020**

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Andrew Lota acknowledges the email exchanges between him and his students reflected within Dover’s exhibits are accurate.<sup>5</sup> Consequently, Respondent concedes the accuracy of the emails listed within the Tenure Charges; Charge Number One, pertaining to student A.N. and Charge Number Three pertaining to student N.D., who was also an eighth grade female math student of Lota’s and a friend of A.N., though were not assigned to the same math class. (T1056/1 to 1057/3)<sup>6</sup> N.D. and A.N. would sometimes come after school, with other math students not assigned to Lota, for extra help. (T977/15 to 978/2) Lota also confirmed his email trails with other students from the commencement of virtual learning until his Google Suite access was disabled. (D-37 through D-65)

Dover hired the school liability expert group, Dr. Jorden Schiff, to conduct an analysis and present an expert report. The report of October 16, 2020, D-32, was offered at hearing, resulting in extensive cross examination of Dr. Schiff. (T618/19 to 732/11) Appendix B of his report lists all documents reviewed, including the Tenure Charges, police files, school policies and procedures, school investigative records and Lota’s personnel records. The school investigation records included emails of the middle school’s other eighth grade math teacher, Thomas Frank, with his students for period March 3, 2020 to April 30, 2020. The spreadsheet of

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<sup>5</sup>Indeed, this was reiterated as the third sentence of the *Statement of Facts* within Respondent’s brief, “The facts of this matter are relatively straightforward and largely undisputed. Respondent relies on the hearing transcripts and the records admitted in evidence as the complete *Statement of Facts*.” (Respondent’s brief at p.4)

<sup>6</sup> Thus, Respondent admits the accuracy of the email trails with A.N., Exhibits D-11 through D-21, email trails with N.D., Exhibits D-23 through D-29, and emails with other students, D-37 to D-65.

Google Meet was also scrutinized. D-22.

Upon review of all the materials listed in Appendix B, Dr. Schiff related the following facts:<sup>7</sup>

Lota, “a. Communicated with A.N. more than any other student and exchanged a significant number of emails with A.N. compared to other students. Between Wednesday, March 18, 2020 and Wednesday, April 22, 2020, Mr. Lota exchanged 163 emails with A.N. and 490 emails with 28 other students. 25% of the total emails reviewed were exchanged between Mr. Lota and A.N. Mr. Lota emailed A.N. 57 times during the weekend, but only emailed with his other students six times on Saturdays and Sundays between March 18, 2020 and April 22, 2020....

b. Mr. Lota had a habit of referring to his female students as “dear” and “love,” whereas his colleague, Mr. Thomas Frank, in his emails with students, was strictly professional and stuck to topics regarding math assignments, submitting work, and assistance signing into the various platforms. Mr. Frank and his students typically exchanged a chain of a few emails (usually between two and six) to answer a specific question or address an issue, and the emails were mostly during school hours. Mr. Frank did respond to student questions/concerns in the evening hours on some occasions, but these conversations were strictly regarding math. Mr. Frank did not refer to female or male students as “dear” or “love.”...

c. No other teacher, whose information we received, engaged in Google Meet sessions with students during the weekend, except Mr. Lota who video conferenced with A.N., and only A.N., seven times on Saturday, April 18, 2020, and three times on Sunday, April 19, 2020.” (D-32 at page 13)<sup>8</sup>

### **Respondent Mailing Books to A.N.**

Prior to the Pandemic, Lota lent books to students at school. During virtual learning, Lota mailed two (2) books to A.N., part of a fourteen (14) book fantasy series. His wife, Alison Merena, assisted him in mailing the books, including driving Mr. Lota to the post office. She corroborated he previously lent books to students, both male and female. (T994/15 to 996/5;

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<sup>7</sup>Dr. Schiff’s *opinion*, based upon these facts, is revealed in the *Position of the District*, below.

<sup>8</sup>The spreadsheet, D-22, disclosed the Goggle Meet sessions between Lota and A.N. on Saturday, April 18, 2020, totaled 128 minutes ending at 11:09 p.m.; the Google Meet sessions between Lota and A.N. on Sunday April 19, 2020 totaled 54 minutes, ending at 8:30 p.m..

T867/13 to 868/14)

**Respondent Requesting A.N. Provide Photograph of Toe**

A.N. complained of a painful toenail as reflected in the Gaggle alert, D-12, above. Lota suggested A.N. provide him a picture of her toe. (T998/8 to 1002/1) Alison Merena confirmed Lota showed her the picture. Ms. Marina is an Outpatient Occupational Physical Therapist with a Master’s Degree in physical therapy. Ms. Marina testified she provided little feedback to her husband for, upon review of the toe, “it didn’t appear to be insidious to me.” (T866/16 to 867/7)

**POSITION OF THE PARTIES**

The parties presented comprehensive arguments, the essence of each is as follows:

**Respondent, Andrew J. Lota**

Lota maintains Petitioner, Board of Education, failed to meet its burden of proving the Tenure Charges against him by preponderance of relevant evidence. Counsel reasons,

“Mr. Lota substantially complied with the Board’s policies on electronic communications with students, which were relaxed amid the outbreak of the coronavirus pandemic and district wide transition to remote learning. There is no evidence that he “groomed” or attempted to establish a sexual relationship with a student. Nothing was presented at the hearing to demonstrate that Mr. Lota caused or attempted to cause harm to anyone.”  
(Page 3)

Reviewing the policies Respondent is alleged to have violated, nothing therein limits the volume or duration of electronic communications a student may have with his/her teacher, the time or days permitted, one-on-one video conferencing, using terms of endearment with students, or lending books.

Respondent asserts *District Policy 3283, D-3, Electronic Communications Between Teaching Staff Members And Students*, enacted in 2014 is not applicable to remote instruction during a “once-in-a-century Pandemic.” Lota avers this policy must be deemed unenforceable as

against electronic communications during full time remote learning. Counsel argues, “Stated differently, the policies are too vague to enforce except against patently inappropriate communications that need not require a consideration of the circumstances.” (Brief at p.18)

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Lota relies on his perception of Vice Principal Carlton’s comments during Staff Goggle Meet sessions. He avers she declared Dover’s electronic communication policies are relaxed during virtual learning. The testimony of Interim Principal Dooley-Malloy, expressly refuting this claim, should be disregarded, for she lied about her prior suspension by the School Ethics Commission.

Moreover, Respondent maintains the District failed to prove he “groomed” A.N. He never communicated with A.N. outside of Google Suites and indeed informed his wife about this student. Dr. Schiff’s testimony and expert report must be accorded no weight, claims Lota, as he had no specialized training or experience in identifying sexual predators or behavior characteristic of grooming.

With respect to Tenure Charge Three, Respondent contends the Board failed to prove he committed conduct unbecoming with respect to any of his electronic communications with N.D. The entire factual predicate underlying Charge Three is that he referred to N.D. as “dear” and “love” and called her a “rock star.” These facts, which are not in dispute, do not meet the criteria established for conduct unbecoming. Consequently, Respondent requests all Tenure Charges be dismissed and a make whole remedy be awarded.

Even if conduct unbecoming is determined, substantial mitigating factors including his exemplary background, willingness to submit to corrective action, and his lack of malicious intent, warrants discipline lesser than dismissal.

## **Dover Board of Education**

The District maintains Respondent's email and video communications with A.N. within the early weeks of virtual learning clearly violated the professional boundaries between a teacher and student. There is no doubt Lota attempted to establish a personal relationship with A.N. His actions not only violated District Policies, handbooks and directives, they placed A.N. at risk of harm.

Dr. Schiff's expert opinion, within a reasonable degree of professional certainty, declared Lota acted in a manner unbecoming a teacher for the State of New Jersey. In his review, Dr. Schiff demonstrated how Lota's conduct "evolved" from an inappropriate mix of math and immature socializing type behaviors to entirely unprofessional and grooming behaviors. (D-32)

At hearing, Dr. Schiff opined,

- “\* Mr. Lota's inappropriate conduct violated District policies concerning staff conduct and the use of electronic communications;
- \* Mr. Lota's conduct met the definition of grooming.
- \* Mr. Lota's electronic communications resulted in the development of a prohibited inappropriate and sexually harassing relationship with a female student; and
- \* Mr. Lota's relationship and communications violated A.N.'s right to learn in a safe environment.”<sup>9</sup> (District Brief at pp. 3-4)

Contrary to Respondent's representation, the Board's communication policies were not relaxed. Neither Vice Principal Carlton nor Interim Principal Dooley-Malloy made such a declaration. Further, on at least three (3) occasions staff was advised not to schedule a 1-on-1 Google Meet. Middle School Social Studies Teacher Kyle Madison confirmed; the only "relaxation" discussed by the Administrators dealt with the mental health of the students - for teachers to be compassionate with due dates, receiving assignments and providing extra help.

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<sup>9</sup>Dover, in its comprehensive Brief, did not present any argument relating to Charge Number Three, Lota's Electronic Communications with N.D.

Madison conducts only group Google Meets; he conceded calling a female student “beautiful” or referring to her as “love” was inappropriate.

The District maintains the proper penalty for Mr. Lota’s flagrant behavior in Dover requires removal from his tenured position. Counsel concludes,

“Mr. Lota as a teacher, was expected to serve as a model of appropriate behavior. Instead, Mr. Lota engaged in inappropriate conduct via email and Google Meets with an 8<sup>th</sup> grade female student. His communications over the course of a few weeks in March and April 2020 demonstrate that he sought to establish a personal relationship with A.N. by using initiating communications, using terms of endearment, engaging in social discussions and juvenile banter, granting A.N. special privileges not extended to any other student, communicating on the weekends, holding one-on-one, and sending A.N. gifts. The behavior by Mr. Lota towards A.N. is also indicative of grooming behaviors. Mr. Lota violated district policies, procedures and standards of conduct. As such, the District respectfully submits that Madam Arbitrator sustain the charges and dismiss Mr. Lota from his teaching position.” (District Brief at p. 80)

#### **ANALYSIS OF EVIDENTIARY FINDINGS**

***Has the Dover School District, Morris County, met its burden of establishing by a preponderance of the credible evidence, the tenure charges against Respondent, Andrew Lota?***

It is axiomatic. New Jersey provides protection to tenured teaching staff members from dismissal or reduction in compensation except for “insufficiency, incapacity or conduct unbecoming such a teaching staff member or other just cause.” *N.J.S.A. 18:28-5(b)* While “conduct unbecoming” is not defined by the statute, it has been considered an elastic standard, determined on a case-by-case basis, embracing a wide range of conduct.

At all times, Dover maintains the burden of establishing by a preponderance of the credible evidence Respondent engaged in conduct unbecoming as alleged in the Tenure Charges *supra*, D-1. The rationale for these protections in an evidentiary review is highlighted herein for a finding of unbecoming conduct will forever tarnish the employment history and reputation of

Andrew Lota. Upon consideration of this record, with emphasis upon resolution of the credibility of the witnesses, I *find* Dover has met its burden with respect to the Tenure Charges related to Lota's conduct with A.N.

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**Tenure Charges Related to Lota's Conduct with A.N.**

The evidentiary findings above reveal the District has established, by the preponderance of the credible evidence, Andrew Lota engaged in the conduct outlined in Charge Number One and, with the exception of the term "grooming," in Charge Number Two.

Lota's electronic communications with A.N. violated *District Policy 3283*, for he clearly established "a personal relationship" with A.N. "beyond the teaching staff member's professional responsibilities." Respondent made "inappropriate comments" referenced in *District Policy 3281 - Inappropriate Staff Conduct*. He failed to maintain a professional relationship with A.N. He utilized Google Meet, "seeking to be in her presence." These Policies are not vague or incompatible with virtual learning.

This record supports Dr. Schiff's pronouncement after review of District documents; Lota's communications in both time and subject matter expanded during virtual learning when initially math was at the forefront to discussions of fantasy books, Lota's opinion of her maturity, expressions of endearment, and extensive Google Meet sessions.

Throughout the hearing, Respondent maintained his objective was to show compassion to an A+ level student with low self-esteem and anxiety "permitted" by the administration's "relaxation" of electronic communication policies. This record does not support Lota's testimony. I credit the testimony of the administrators, including Interim Middle School Principal Aretha Dooley-Malloy. Social Study teacher, Kyle Madison, also confirmed Petitioner

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never modified its policies on appropriate staff conduct or electronic communications between teaching staff members and students.

While Middle School administrators, during virtual staff meetings with teaching staff, discussed showing compassion for the mental health of students and appreciation of their struggles with virtual learning, it is dishonorable to suggest the administration's concern granted permission for a middle-aged teacher to engage in private communications with a 15 - year old, alone in her room on a Saturday night.

Respondent often initiated e-mail contacts with A.N., D-11 to D-21. Respondent initiated every Google Meet invite. Lota was aware, due to statutory privacy concerns, his conversations with A.N. would not be recorded. Respondent's failure to communicate his articulated concern over A.N.'s pervasive low self-esteem or anxiety to either School Guidance or A.N.'s Mother is unsettling.

### **Grooming**

Upon consideration of this record in its entirety, I *find* there is insufficient evidence to support Charge Number Two (f), "Mr. Lota's behavior with A.N. constitutes grooming." Counsel's argument is persuasive. Dr. Schiff's expertise is in the field of education administration. Reviewing Appendix A, attached to his expert report, D-32, failed to identify any training or educational qualifications that could classify him an expert on determining "grooming" behaviors. Review of the resources Dr. Schiff utilized listed in Appendix B of his report list documents from the United States Department of Education and the American Bar Association. Reading these documents, without further training, did not transform him into an expert whose opinion on "grooming" would be helpful to the undersigned, as the trier of fact.

Nevertheless, this record unquestionably supports finding Lota established a special personal relationship with A.N. far beyond a teaching staff member's professional responsibility, in violation of District Policies.

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**Tenure Charge Number Three, Related to Lota's Conduct With N.D.**

Respondent acknowledged his electronic communications with N.D.. No other evidence was proffered supporting this Charge; Dover did not address the Charge in its post hearing submission. Upon review, I *find* the emails do not establish conduct unbecoming as alleged in Charge Number Three.

Lota neither initiated email exchanges with N.D. nor sent her a Google Meet invite, D-23 to D-29. The difference in scope of his communications with A.N. compared to N.D. highlights the evolution of his special relationship with A.N. from March 16, 2020 to April 22, 2020 - to the point of appearing preoccupied with maintaining communication with A.N. throughout Saturday and Sunday, April 18 and 19, 2020.

Accordingly, the record established Respondent engaged in the conduct unbecoming, with the exception of "grooming" as expressed in Charges Number One, Two and Four.

***Do the tenure charges warrant dismissal or a lesser discipline?***

Andrew Lota, prior to the 2019-2020 school year, served both the District and his students in performing the duties of a middle school math teacher for twelve (12) years. Seeking a lesser discipline than dismissal, Respondent's counsel requested this arbitrator consider mitigating factors such as his exemplary background, willingness to submit to corrective action

and lack of malicious intent.<sup>10</sup>

The record review, however, does not support mitigation. Throughout the hearing, Lota refused to concede his conduct violated any District Policies. On direct examination, Respondent articulated contrition, expressing his conduct would not be repeated. However, on cross-examination, Lota was argumentative; he denied his conduct was inappropriate, even announcing he would send the same emails again:

“Q. We talked about this a few minutes ago with some of the e-mails that we went over. You made the decision to use those terms of endearment with AN; correct?”

A. Yes, sir.

Q. And you would agree with me you could have used other terms, words, or phrases if you truly wanted to be supportive or encouraging to AN; correct?

A. Yes, I could always – anybody could always use other terms or words.

Q. And again, those e-mails that we reviewed during the course of the case so far, you made the decision to send those e-mails to AN; right?

A. Of course I did. And would again.

Q. And you would again? Okay.<sup>11</sup> (T1310/6 to 23)

...

(T1311 to 1312)

Q. Okay. And you testified that you called AN “beautiful” because she was cute; right?

A. No.

Q. No.? And during the course of your direct testimony you testified, at least according to my notes, that quote, unquote, “This will never happen again.” Do you remember that testimony?

A. I have no idea what you’re talking about.

Q. No?

Okay. All right.

You agree that your e-mails and your electronic communications you had with AN from an objective standpoint looked really bad; correct?

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<sup>10</sup> In addition to traditional mitigating factors,, the undersigned considered the commencement of the Pandemic as a mitigating factor. During March to late April, normal life ceased - replaced by a fog of anxiety for the unknown, concern for our health and the health of our loved ones. (Before it was understood Covid 19 was transmitted through the air - not likely from touching surfaces, fomites.)

<sup>11</sup>The words of endearment included beautiful, love and dear. Lota ,on cross, testified using terms of endearment “absolutely” has educational value. (T1347/11 to 1349/23)

- I believe those were your words.
- A. I don't believe those are my words.
- Q. Okay.
- A. From us. I probably said cynical or cynic's viewpoint they look bad." (T1312/21 to 1312/15)
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- ...
- Q. Mr. Lota, you're being argumentative, and I'm not looking to be argumentative back with you. I'm just asking you if you remember your testimony where you said the electronic communications made you look horrible?
- A. I don't remember that, no.
- Q. Okay. All right.  
And you would agree with me that the electronic communications you had with AN, from an objective standpoint, looks like you were trying to establish a personal relationship with her; correct?
- A. No.
- Q. During your attorney's opening statements your attorney said some of your e-mails were not smart. Do you agree with that statement?
- A. I would have said naive, but, yes.
- Q. Yes what? You agree with your attorney's statement that some of your e-mails were, quote, unquote, "not smart"?
- A. They were not smart to send from a point of view where people looking at it that think the worse would misconstrue them. That's what I agree with.
- Q. Okay. So what you're saying is that you agree that they weren't smart because of how they may be viewed objectively by district –
- A. Not objectively, cynically." (T1313/1 to 1314/7)

It is clear; Mr. Lota's conduct is a clear egregious violation of *District Policy 3281 - Inappropriate Staff Conduct* and *District Policy 3283 - Electronic Communications between Teaching Staff Members and Students*. Therein, the Board recognized school staff members hold the public's trust and confidence to protect the well being of all students to the highest level of professional responsibility.

A review of this record, in its entirety, did not disclose any attestation of Respondent's willingness to submit to corrective action. His conduct has broken the level of trust the District expects to rely upon for a teacher to perform his requisite duties. In light of Lota's failure to

recognize his conduct with A.N. was inappropriate, it remains a likelihood this behavior, upon reinstatement, could reoccur.

**AWARD**

The Charges are *sustained*, in part, and *denied*, in part. The Dover School District, Morris County, has established Andrew Lota engaged in actions expressed in Tenure Charges One, Two, and Four, *Conduct Unbecoming a Teaching Staff Member*.

There is insufficient evidence in this record to support discipline less than dismissal. Accordingly, Andrew Lota engaged in conduct unbecoming, constituting just cause for dismissal.

DATED: May 28, 2021

Carol F. Laskin  
CAROL F. LASKIN, ESQUIRE

STATE OF NEW JERSEY :

COUNTY OF CAMDEN :

I CERTIFY that on May 28, 2021

I, CAROL F. LASKIN, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Decision and Award.

DATED: May 28, 2021 Lynda A Hillpot  
NOTARY PUBLIC OF THE  
STATE OF NEW JERSEY

**Lynda A Hillpot  
Notary Public  
New Jersey  
My Commission Expires 7-2-24  
No. 50108025**