

Pursuant to Referral by the Commissioner of Education
State of New Jersey
Before Timothy J. Brown, Esquire

In the matter of:

**The Tenure Hearing of Alix
Gillespie**

and

**Gloucester County Special School District
and Vocational School District,
Gloucester County**

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:
:
: **Docket No. 241-12/21**
:
:
:

Decision and Award

Appearances:

On behalf of Alix Gillespie:

Keith Waldman, Esquire
Hop T. Wechsler, Esquire
Selikoff & Cohen, PA
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Mt. Laurel, NJ 08054

**On behalf of Gloucester County Special
School District and Vocational School District,
Gloucester County:**

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Introduction

This matter arises from tenure charges of unbecoming conduct and other just cause sufficient to warrant dismissal against **Alix Gillespie**, (Respondent) certified by the **Gloucester County Special School District Board of Education**, (the District) and a January 4, 2022

referral of the tenure charges to the undersigned by the New Jersey Department of Education, Office of Controversies and Disputes pursuant to N.J.S.A. 18A:6-16. A hearing in the matter was conducted in-person on February 17, 24 and 15, 2022 in Sewell, New Jersey and via the Zoom virtual platform on March 11, 2022. All parties were afforded the opportunity for argument, examination and cross-examination of witnesses and the introduction of relevant exhibits. Respondent Alix Gillespie was present for the entire hearing and testified on her own behalf. By agreement of the parties, the hearing was not transcribed. At the close of the hearing on March 11, 2022, the parties elected to submit written closing argument, upon the receipt of which by the arbitrator on April 11, 2022, the matter was deemed submitted.

This Decision and Award is made following my careful consideration of the entire record in the matter, including the undersigned's observations of the demeanor of all witnesses.

Issues

The issues presented in this matter may be accurately stated as follows:

Has the District met its burden of establishing the truth of its tenure charges against Respondent, and if so, what is the appropriate discipline, if any?

The Tenure Charges

The tenure charges in this matter were filed by the District's Assistant Superintendent for Business/ Board Secretary Amy Capriotte, on December 17, 2021. The Statement of Charges filed by the Board, (without included references to attached evidence) provide:

I, Amy Capriotti, Assistant Superintendent for Business/Board Secretary, do hereby charge that Ms. Alix Gillespie Tyson¹ (hereinafter Tyson), employed by the Board of Education of the Special Services and the Vocational School District of the County of Gloucester (hereinafter “District”) as a tenured Teacher of Students with Disabilities, is guilty of (1) conduct unbecoming a teaching staff member; and (2) other just cause, so as to require her employment with the District be terminated.

More particularly, it is charged that:

Charge 1: Conduct Unbecoming a Teaching Staff Member

Tyson is a tenured Teacher of Students with Disabilities. She has been employed with the District since 2012.

On or about March 8, 2021, Tyson was assigned to provide homebound instruction through the District’s CRESS program. The CRESS program contracts with local school districts to provide their students with home bound and other related special needs instructional services.

Tyson was assigned to teach algebra to a homebound student with the initials A.T. starting in Spring 2021. A.T. was a minor, eleventh grade student from Kingsway School District (“Kingsway”). Which is one of the largest school districts in Gloucester County and a longstanding client of the CRESS program.

On or about October 25, 2021, CRESS program received an email complaint that was sent to Kingsway by A.T. after she was notified that Tyson was going to be assigned to be her instructor for the 2021-2022 school year. A.T. reported in her email complaint that Tyson was not providing her instruction, was unprofessional, failed to actually visit the student during scheduled instruction time; used text messaging in lieu of face-to-face instruction and falsified time records, including forging her parent’s signature on CRESS time sheets.

The District investigated the complaint by reviewing the text messages between A.T. and Tyson and the timesheets that were submitted to CRESS. The texts corroborated some of the complaints about lack of instruction offered by Tyson. Those coupled with the timesheets and the falsified parental forms confirmed that Tyson was giving herself credit for performing instruction in A.T.’s home, even though she was not actually

¹ By the time of the referral of this matter to the arbitrator, Respondent had changed her name to Alix Gillespie.

present. Kingsway was charged for in-person instruction based on Tyson's falsified timesheets.

The District interviewed Tyson and advised her of A.T.'s complaint. Tyson did not deny that she performed her in-person services remotely and claimed that A.T., who Tyson indicated was "awful" at math, was fine working on her own in algebra.

During the interview, Tyson indicated that at one point during Spring 2021 she became aware that A.T. had threatened to actually run away out of state with a boyfriend. Tyson failed to notify anyone that she was aware of this from the student, which is a violation of Board Policy 3281- Inappropriate Staff Conduct and 3280 – Liability for Pupil Welfare. Tyson also indicated that she did "virtual" instruction during this time in an effort to avoid getting A.T. "in trouble with school."

It was also discovered during the investigation that Tyson was using her personal cellular phone to communicate with A.T. which is a violation of CRESS program rules and District Policy 3281.1 Staff and Communication with Students and 3283 – Electronic Communication between Teaching Staff Members and Students. All CRESS teachers and professionals are equipped to communicate with students through the District approved messaging platform.

Tyson received and accepted pay for home instruction for A.T. that she was not entitled to receive. As a result of her fraud, the CRESS program was forced to refund all of the fees paid by Kingsway for A.T.'s instruction in 2021. Her actions tarnished the excellent client relationship CRESS and the District has with Kingsway.

For all these reasons, the District is justified in seeking the permanent dismissal of Tyson's employment with the District.

Charge 2: Other Just Cause

The above described conduct amounts to neglect of duty, fraud, and theft by deception which constitutes other just cause warranting Tyson's permanent dismissal from employment.

The District asserts that Respondent's conduct amounts to unbecoming conduct and warrants her dismissal according to N.J.S.A. 18A:6-10.

N.J.S.A. 18A:6-10 provides in relevant part:

No person shall be dismissed or reduced in compensation,

(a) if he is or shall be under tenure of office, position or employment during good behavior and efficiency in the public school system of the state, ...

except for inefficiency, incapacity, unbecoming conduct, or other just cause, and then only after a hearing held pursuant to this subarticle, by the commissioner, or a person appointed by him to act in his behalf, after a written charge or charges, of the cause or causes of complaint, shall have been preferred against such person, signed by the person or persons making the same, who may or may not be a member or members of a board of education, and filed and proceeded upon as in this subarticle provided...

Summary of Relevant Testimony² and Evidence

Kathleen Monti

District Director of CRESS testified that she has worked for the District for 13 years. The District through CRESS provides related services to sending districts; including “home-bound instruction.” The District contracts with sending districts for home-bound instruction services for individual students of sending districts. The Homebound Services program director assigns the instruction of particular students to teachers in the Homebound Services program and those teachers are then responsible for complying with the requirements of the program’s contract with the sending districts. Home bound instructors are paid a stipend above what the instructor’s salary may be, if the instructor is a teacher in the District. Payment is based upon time sheets submitted by teachers and time records signed by parent/guardians of participating students.

² I have not summarized witnesses presented by Respondent relating to her character and/or teaching ability, effectiveness and/or style.

Monti testified that every employee who begins teaching for the CRESS Homebound program is subject to an onboarding process by the Program Director³ that includes an on-boarding packet, including the Homebound Services Employee manual, and told to contact the program director should they have any questions.

Monti first learned of the student involved in this matter, A.T.⁴, in October 2021⁵ when the head of counseling at sending-school-district Kingsway School District (Kingsway) communicated to the District concerns about the services provided by CRESS to A.T. The concerns arose as a result of an email from A.T. to her Kingsway guidance counselor John Cappolina objecting to the assignment of Respondent to provide A.T. home-bound services beginning in October for the 2021-2022 school year. The email provides, in relevant part:

Hi, so I just found out that I have Alix Gillespie as my home instructor again for environmental science, animal science, forensic science and P.E. If possible I would really like to request a different home instructor. Mt reasoning for that request being:

-She did not teach me a single thing last year.

-She did not help me with math once. When I say I taught myself the entire year last year on my own I genuinely mean that. Not only was that a lot of stress on me but also made it difficult since it was all new material for me that I had never learned prior.

-She was unprofessional and would “log hours” with me even though a lot of those “hours” were me doing my math myself without her help or instruction whatsoever. She made it seem as if she was at my house teaching me on paper. When in reality she was just texting me or reminding me to do my math on my own.

³ At all times relevant herein, the Homebound Program director was Emilie Seibert. Seibert was not called to testify by the District.

⁴ Students are referenced herein by initials.

⁵ All dates hereinafter are 2021 unless otherwise indicated.

-When she was at my house “teaching me” she would waste a lot of time. By that I mean she’d just hover over one worksheet or she’d more so discuss what needed to be done next. Never actually work with me on what needed to be done on that given day. Because of this, or I suppose her “teaching methods,” I literally learned absolutely nothing last year aside from math (solely because I taught it to myself), And I definitely was more behind that I should have been last year.

-She would pretty much lie and “log hours” for home instruction when I was just doing homework. Like on my own without her presence or her help or her instructing me at all.

-The last reason being I suppose is that she also doesn’t physically come to houses anymore this year and I just don’t do well with virtual learning, I never have and especially with science classes where they’re quite involved classes and I actually need a teacher. Not someone to just SAY they are teaching me.

I just strongly do not want Ms. Gillespie as my “teacher” this year again. If you don’t believe or trust any of the above reasons either. She was also forging my moms signature to log those “Hours with me” because she wasn’t actually here...I apologize for such a long email but if I have her as my teacher” again, its simply not right. I do not get taught, and as I am a student, I would appreciate someone who can properly teach me the curriculum I need to progress and succeed this year.

I will await your response-
Thanks

According to Monti, Kingsway also provided copies of screen shots of a number of text messages between Respondent and A.T. supporting the claims of A.T. According to Monti, upon receiving the communication from Kingsway, the District initiated an investigation. Monti thereafter called a meeting with Respondent, Monti’s supervisor Dana Lamonica and the Union’s president to discuss the matter. That meeting occurred on October 28, 2021. According to Monti, the A.T. allegations were presented to

Respondent, who seemed caught off-guard by the matter. The District managers showed Respondent the text messages provided by A.T. and the time sheets Respondent had submitted relating to her instruction of A.T. According to Monti, during the meeting Respondent “indicated she had written/scribbled the mom’s signature,” stated that mom was “sometimes hard to reach or also not present.” According to Monti, Respondent stated she was just trying to help A.T. pass her courses and catch up. The managers stated that the District had a contract with Kingsway and had to be honest about the services it provided, and had to comply with District policy. Monti testified that during the meeting Respondent stated that there was a time during her period with A.T. when the student said she was going to “run away,” and, according to Monti, Respondent’s failure to report such a statement by the student to the District so the district could notify Kingsway was a violation of District policy; as was Respondent’s use of a cell phone to communicate with A.T. and use of texts for communicating with a student.

Monti explained that according to policy, a parent has to be home for home-bound instruction so that there is no inappropriate conduct by the teacher and so the parent can know that instruction is taking place. As for texting, Monti testified that the policy against texting “is basic,” texting is an unprofessional means of communication and the District policy is that teachers do not communicate with students through text messaging or the use of cell phones. The District has, Monti explained, other means to get messages to the parents of student and students. An on-going, back-and-forth, text messaging between a teacher and student is against policy.

If a parent is not home for home-instruction, Monti testified, the teacher is to contact the program manager and leave the student’s premises. If a teacher is having

trouble contacting a parent or student, the teacher is supposed to discuss the matter with the program manager. During the October 28 meeting, it also became apparent to Monti that Respondent and the District managers had a different idea of what “virtual” learning was; with Respondent including text messages in her view and the District meaning, simply and only virtual classes. Respondent, according to Monti’s review of text message screen shots, would have the student take pictures of her work and text them to Respondent. Also, Monti continued, Respondent provided A.T. the address for the Slader.com website where the student could input her textbook number and find answers to problems. Going through the messages, Monti explained, you can see Respondent texting the student the problems the student was to do and instructions to send Respondent pictures of her work when she was done. Right there, Monti explained, was a red flag that Respondent was not giving instruction in person.

CRESS Homebound program has had to deal with situations where a teacher is not comfortable with going into a home for a variety of legitimate reasons and in such cases CRESS will discuss the situation with the sending district and try to work out an alternative location for instruction or, if such cannot be done, inform the sending district the contract cannot be continued. As far as Monti knows, Respondent did not communicate any such problems relating to A.T.

According to Monti, the time sheets provide by CRESS to Respondent are intended to provide a record for the amount of time the teacher spends giving in-home instruction or preparing for such. Nothing on the time sheets completed by Respondent indicate that the instruction was not performed in A.T.’s home. Monti testified the District also provides time-sheets for parent verification of instruction time. The

verification forms provide spaces for parents, or another District representative if present, to sign their names verifying that instruction occurred. There is also a portion of the form to document cancellations and the reasons therefor. Time forms are submitted to the CRESS office and a clerical employee processes the forms.

There are a number of places on Respondent's time sheets where "virtual" instruction is indicated. Monti testified that, in a perfect world, that would mean that the teacher spent the time indicated being present with the student virtually and actively teaching for the time indicated. Texting a student, Monti testified, is not such instruction. If something needed to be adjusted relating to the manner in which instruction is to occur, Monti testified that such issues would be handled by the CRESS program manager who would contact the sending district and work things out. To her knowledge, Monti testified, Respondent did not seek a modification of the manner of instruction relating to A.T.

Monti testified that Kingsway was paying CRESS for in-person, direct instruction. If such was not going to occur, Monti explained, Kingsway could have just live-streamed the student into the classes. Monti testified that Kingsway indicated in their initial emails on the issue that they were considering requesting refund of their contract payments relating to Respondent's work with A.T. (what Monti described as informal discussions on the subject), but that as of the hearing in the matter, the District has not refunded any money to Kingsway. If Kingsway makes such a request, Monti believes the District will not challenge such a refund. This incident affects the department's reputation for ethical, fair and honest service, Monti testified, and in this circumstance, it involved Kingsway, one of the District's largest customers.

Monti testified that a particular text exchange seemed to indicate there was an understanding between Respondent and A.T. that instruction would not be done in the proper manner and that time could be claimed that was not accurate. The text related to Monti's testimony in this regard provides:

[Respondent]
Yeah I recorded your full amount of hours possible
finally past two weeks only 2 cancels so yeah we met!

Have you turned in any math work beyond last time

[A.T.]
No, I'll send it all tonight, I kept forgetting but
while I do it later I'll send it, take pictures as I
go

[Respondent]
OK please do because I need to know that it's it's all
true hide I believe you but it helps to know and I
wanna keep it going especially for guidance to say
because they have to renew your contract so they
wanna make sure that you're working! Super
important

According to Monti, the District did shut down for COVID for a while, but CRESS continued. The program manager (Seibert) would have given instruction to teacher providers as to how to manage Covid.

Monti testified that she does not recall using the words "fraud" or "theft of service" on October 28. She testified that as of October 28, she did not know what was going to happen with the investigation. After October 28, she forwarded the matter to upper administration; the Assistant Superintendent and Superintendent. Monti testified she does not know how A.T. did grade-wise during the 2020-2021 school years, and that she did not speak with A.T.'s mother and did not speak with any of A.T.'s teachers. As

for the Slader.com website, she testified that she went onto the website for reference, but that she could not testified that any of the District's textbooks are on Slader.

In regard to the CRESS Homebound Services employee manual, Monti testified that program manager Siebert provides the manual to home-bound instructors. She testified that home-bound instructors sign a verification of receipt of the manual. CRESS does not provide Home-bound instructors with phones. It is expected that teachers will use their own phones. If a session is cancelled with less than 24-hour notice, the teacher receives pay for the session. To her knowledge, no student has ever been dropped for excessive cancellations.

In regard to October 28, Monti testified that her notes of the October 28 meeting indicate that Respondent said that she scribbled "a" signature, because mom was unavailable. She testified that at the October 28 meeting, Respondent did not say that A.T.'s parent signed any verification forms. The only person Respondent identified as having signed time-sheets and verifications forms other than herself, was A.T.'s boyfriend. (Monti later learned that Respondent's assistant had also signed the forms.) Monti testified she does not know whether or not A.T.'s mother gave Respondent permission to contact A.T. directly.

Monti testified that if there were to be modifications to in-home instruction for any CRESS student, such would have to go through Monti's office. Respondent did not so pursue any modifications.

Danna Lamonica

Dana Lamonica is the Supervisor of CRESS. She testified that home-bound instructors are monitored by the program manager. Lamonica testified that she learned of

the A.T. issue with Respondent in October when A.T. made complaints about Respondent. Lamonica was present during the October 28 meeting with Respondent. According to Lamonica, Respondent was confronted with the allegations of A.T. and Respondent “admitted everything.” Respondent, according to Lamonica, admitted that she did not always go to the house because the house was dirty, that mom was not always present, that she had to sign for mom, that the student was very good at math and that Respondent did not really understand her roll in math, that the student just handed in her work. During the October 28 meeting, Lamonica testified, Respondent said that at one point A.T. told her she was going to run away with her boyfriend, and that Respondent told the student she didn’t want the student to miss the credits so Respondent wanted to provide her instruction virtually because she wanted the student to pass to her senior year.

The text messages did not show that instruction was actually going on, Lamonica testified. Instead, it was Respondent telling the student if she handed in her work, Respondent would give the student full credit for it. The back and forth of the texts seemed, Lamonica testified, more friendly than should be from a professional to a student. In one text, Lamonica noted, A.T. said she was feeling sick and Respondent said well, let’s just jump on Zoom. Lamonica testified that texting is against all District policies. According to Lamonica, during the October 28 interview, Respondent said that sometimes mom was not at home and that sometimes the boyfriend was there. If a parent is not home, Lamonica testified, the instructor is required to leave the home immediately, and CRESS would contact the sending district. Lamonica testified that it is her understanding that at times when A.T.’s mom was not present, Respondent was motivated by a desire to help the student get through her year, pass her courses and go to

her senior year. But, Lamonica testified, if a parent is not home, you just cannot do that. That is in the employee handbook.

If Respondent had an issue with being in the home to instruct A.T., Respondent should have reported such to the program manager, the program manager would have discussed it with Monti and Lamonica, and the two managers would discuss the issues with Kingsway, and Kingsway would have made the decision. Kingsway is a “huge” customer of CRESS, Lamonica testified.

Lamonica testified that CRESS Homebound Services has an “onboarding” process. Program manager Siebert handles the onboarding. Onboarding can be in-person or virtual. Seibert provides a link to the new teachers for all of the materials. Teachers sign off on onboarding paperwork acknowledging that they have received and reviewed the materials.

In terms of Covid response, CRESS followed the lead of the District, Lamonica testified. When the District went virtual, CRESS went virtual. When the District went back to in-person, so did CRESS. Lamonica testified that CRESS staff was told that if instruction took place virtually, they were to just write “virtual” on the verification forms. According to Lamonica, communication about such would have been by Seibert.

Lamonica testified that she asked program director Seibert if she had any communication with Respondent about A.T. and that Seibert said she had. But, Lamonica does not know the details of such communications.

Michael Dicken

Superintendent Michael Dicken testified that he learned of the issue with A.T. from the supervisor of the CRESS program. He reviewed the investigation performed by

CRESS and he was saddened. The CRESS program is an enterprise program and the District's business model is to collect revenue and a lack of trust by other school districts could cost the District. He testified that all staff are trained in all programs annually. He helps design the training and works with HR to create policies that comply with the state Department of Education regulations. Part of the training program is to have employees sign acknowledgements of training when received. If such an acknowledgement is not in an employee's file it is possible that the employee did not receive the training.

A.T.

A.T. testified that she is now a senior in high school at Kingsway High School. She has had 10 or more home-bound instructors in five years. Respondent taught her bio, math, PE and History. Respondent began instructing her in March 2021. She testified that Respondent was "supposed to" teach her algebra. Respondent did not teach her math, A.T. did it on her own, she testified. Rather than teach her, Respondent would tell A.T. what to print, what was the next lesson, and tell her to do the lessons and quizzes on her own. According to A.T., this was not how other teachers had taught her in the home-bound program, the others would "actually teach."

A.T. testified that when Respondent started teaching A.T. in March 2021, Respondent came to her home. Respondent taught her bio in an active way, although A.T. had a hard time understanding what was going on because A.T. had never had bio before. But, at least Respondent seemed to be trying to teach her, A.T. testified. In contrast, when it came to math, Respondent would not actively teach her, but instead would tell her what lessons etc. to print off and then tell A.T. to do them. Respondent did not help A.T. do the lessons; she did not teach A.T. math, and when A.T. asked Respondent for help with

math, Respondent sent her to Slader.com. But that website did not help A.T. learn math and everything she learned about math, A.T. testified, she had to teach herself.

A.T. testified that whenever Respondent came to A.T.'s home to teach, A.T.'s mother would be home. A.T. testified that her mother would not usually be present in the room but would just pass by. She testified that her mother signed off on lessons when Respondent came over "maybe a handful of times." A.T. testified that on the March 31 Verification Form relating to Respondent's teaching, in the parent/adult signature column, the signatures for "HBI" on March 20, 24, and possibly 27 are her mother's. She testified the signature on March 21 for "HBI Virtual," and March 28 for "HBI" are not her mom's signatures. On the April 15 Verification Form, A.T. testified that the signatures on April 5 and 6 for "HIB" are not her mother's. For the form dated April 30, the signatures on the form are not her mother's, including the signatures for "HBI" on April 16, 17 and 18. On the form dated May 14, her mom's signature does not appear on any of the seven dates indicated, or on the dates indicated on the May 28 form; all of which on the May 28 form state "Alix." (All of the activities on the form state either "HBI Prep" or "HBI Virtual.")

A.T. testified that she was not home from April 21 to June 1, as she was in Illinois and then Colorado for a few days. During the period she was gone, A.T. testified, she was in contact with Respondent. They would usually do Zooms or Respondent would call A.T. by phone. She doubts that Respondent spoke with her on April 22 as A.T. had travelled the day before and, she testified, she would "likely" have been very tired. At times when she was in Illinois, Respondent would talk with her for a full two hours, but not always, A.T. testified. As for how Respondent taught, it was the same deal; same for

subjects other than math, and for math, Respondent would just leave it to A.T. to teach herself. As for June 1, A.T. testified, “I guarantee I did not have a conversation with Respondent on that day,” explaining she was on a plane to the Philadelphia airport and she would remember having a two-hour conversation with Respondent that day. She did not, she testified. A.T. further testified that she does not believe she had virtual instruction on all of the dates indicated for such on the June 15 or June 30 verification forms, and added that none of the signatures on the forms are her mother’s. A.T. testified she does not recall meeting with Grievant at all in June.

A.T. testified that there was a time when she was thinking about running away from home. She told Respondent of her thoughts before she went to Illinois. She wanted to run away because her living situation was abusive and toxic, her mother was abusive to her and Respondent knew there was abuse going on as she told Respondent. A.T. also testified that her conversation with Respondent about running away had nothing to do with her going to Illinois to see her boyfriend, that the conversation would have been about getting away from her mother. When asked what she told Respondent, A.T. testified she “probably” told Respondent her mother is an addict, “probably” told Respondent that her mother was abusive, “probably” told Respondent her mother’s boyfriend who lives with them was a drunk, had anger issues and put holes in walls, and “probably” told Respondent her mother was neglectful to an extent, and did not cook or buy groceries. A.T. does not recall Respondent’s response, but recalled that Respondent told the student she also had a lot on her own plate, was going through a divorce and a lot of health issues and was incredibly stressed out. Respondent did not offer to help or get A.T. help, or get someone to talk to A.T. about running away.

A.T. testified that she passed her junior year. She is now in in-home-instruction because of chronic health issues and home issues. In March 2021, she had the option to live stream classes in addition to her home schooling. Before Respondent began with A.T. she had not been attending class. She testified she has always been good at math. A.T. testified that she did have questions about math and asked Respondent for help and that is when Respondent sent her to Slader.com. She testified she went to the website but did not use it. She recalled Respondent told her about a former student of hers who used Slader.com for math. When asked on cross that Respondent, “was not encouraging you” to use the website, was she? A.T. answered “She was, that is why she sent it to me.”

A.T. testified that Respondent “probably” got her cell phone number from her mother. Her mom made A.T. the contact for scheduling purposes. A.T. testified that she worked at Acme and did not know her schedule far in advance, so Respondent had to be in contact with A.T. directly. Her mother worked from home and was home when Respondent was there. She testified that she “guesses” she told Respondent that A.T. only communicates by text. A.T. recalled that she and Respondent did try zoom. She also testified that there were quite a few times when A.T. would tell Respondent on the day of that she did not feel well and did not want to meet or zoom and would do math on her own. They could have been cancellations, but Respondent would claim two hours of teaching, A.T. testified.

A.T. testified that Respondent never once checked her math homework or quizzes, or any of her math work. A.T. testified that Respondent would check in on her to make sure she was doing the work. Respondent just cared that A.T. sent in evidence of her work.

There were times, A.T. testified that Respondent logged into Schoology at the same time A.T. did and followed along when A.T. did work. A.T. testified that she had many more texts than the ones she provided the District, and that the printed texts she provided the District were incomplete.

A.T. recalled that Respondent met A.T.'s boyfriend in A.T.'s home sometime before June 1. She testified that her mother and Respondent knew she was going to Illinois and Colorado and was in Illinois and Colorado, and that she told Respondent when she was away when she was going to return.

In regard to the 2021-2022 school year, A.T. recalls texting Respondent and learning that Respondent would only be teaching virtual that year. A.T. did not want to do virtual. A.T. testified that when she wrote her email to Cappolina, she thought Respondent would get in trouble, but, she added, Respondent is responsible for her own conduct.

A.T. testified that when she spoke to Respondent about running away, it had nothing to do with her boyfriend; it was because of her mom. The trip out of state with her boyfriend, A.T. testified, had nothing to do with her wanting to run away. She testified that she recalled texting Respondent and asking if she knew anything about child protective services because A.T. was thinking about reporting her mom at the time.⁶

Danielle Davis

GCSS Specialized Program Assistant Danielle Davis has worked for the District for 19 years. She is the local union president. She testified that she is familiar with the CRESS program from representing employees in the program and from working in the

⁶ There is no such text in the record.

program, in home-bound instruction, for five to seven years; probably ten years ago. She is currently qualified in the program, but has no active cases. She did not receive any training when she first began working home-bound and recalled no on-boarding process. Her skill set was just matched by the program to a student. She testified that she has not previously seen the Homebound Service Employee Manual. She also testified that she does not know what the current training or onboard process for CRESS is.

Davis testified that she attended the October 28 meeting with Respondent called by Monti and Lamonica. Davis learned of the meeting on the day of the meeting. She was not told what the meeting was about in advance. Davis spoke to Respondent prior to the meeting starting and testified that Respondent also did not know the purpose of the meeting. Monti started the meeting saying they had received a complaint about one of Respondent's cases and then described what the complaint was about. Davis testified that at one point Respondent was asked if she had signed A.T.'s mother's name on any verification forms and responded no, that she had signed her own name. During the meeting, Davis testified, Respondent did not state that she ever signed the mother's name, or that she was ever at the home of the student without the student's mother being home. Davis testified that the meeting ended with the managers stating that it was an open investigation, they would be in contact with Kingsway, and there was no disciplinary action being taken at that time. Upon reviewing her notes of the October 28 meeting, Davis recalled that during the meeting Monti stated the issue involved "fraud, theft, forgery."

Davis testified that on the day after the meeting she was told by her building principal to contact Respondent and inform her that she was being put out on

administrative leave and was not to visit any school property. Davis testified she was never informed by the District that the investigation had been completed.

Respondent

Respondent testified that she is certified in K-12 biology and Students with Disability. She is a teacher of science in High School grades 9 through 12. She began in CRESS in 2018. Prior to this matter, she has had no discipline.

She testified that she became a homebound instructor by responding to an email from CRESS. She testified that she does not recall receiving any training from CRESS, nor ever receiving an employee manual from CRESS Homebound Services. During her time working for Homebound Services, her contact there was always, and only, Emily Seibert. Seibert assigned her cases and if Respondent had any questions she would direct them to Seibert.

Respondent testified that she works out schedules based upon her own schedule and that of her students. When teaching in a student's home, she testified, there absolutely has to be a parent or someone over 18 in the home if the parent has designated such a person to be there. Her initial contact with parents is usually by cell phone.

Homebound instruction is paid hourly based upon the hours designated in the contract document. She testified that she keeps track of her hours mostly "kinda in my head" because she is busy, and eventually she puts them on her time sheet. Sometimes she puts them directly on the time sheet if she remembers to have them with her at the time. The time sheets and verification forms have to match one another, she testified. Hours are submitted generally on the 15th and last day of the month by dropping them in a mailbox outside of the CRESS office. She testified that if a session needs to be

cancelled by a student, the student's parents are required to cancel with more than 24-hour notice, and if less than 24-hour notice is given, the teacher is paid for the session. If a student has many cancellations, it is up to the sending district to determine whether a contract should be discontinued. She has had students that have many cancellations, but no contract has been cancelled. There are spaces for three cancellations of the verification form and in her experience most students have one to three cancellation each reporting period.

When Covid first struck, no one at either school district knew what to do and everyone did what they could; everything had to be virtual, it was a learning process, "we had to learn as we went," Respondent testified. Respondent testified that for CRESS, everything had to be virtual. She testified that at that time, she called Emily Seibert and asked how she was to have the verification forms completed if everything was virtual and Seibert said Respondent should write "HBI virtual" and sign her own name on the verification form. Respondent testified that she and Seibert communicated primarily by phone; they "spoke often and always," she testified. Respondent testified that thereafter she would write HBI virtual and sign her own name for any virtual session she had. She testified that the rule was that for virtual classes a parent had to be in the home, but was not required to be on screen.

Respondent testified that she does not recall the CRESS Homebound program ever communicating that she was required to stop virtual instruction. However, she added, she must have known that in-person was permitted at some point as she gave A.T in home instruction. Respondent testified that no one from CRESS ever denied her payment for hours identified as "HBI virtual," and that she was always paid for hours

marked as HBI virtual. She testified that she knows her forms were reviewed because at some point she gave a student instruction during school hours, in the school during lunch, and that she was later told the time would not be paid since it took place during regular school hours.

In regard to A.T., Respondent testified, after she was assigned the student, Respondent spoke to A.T.'s counselor and teachers and then, after numerous unsuccessful attempts, reached A.T.'s mom by phone. Respondent testified that the mom initially requested that instruction occur during the day, but that after two calls during which Respondent explained that she was a full-time teacher and could not do instruction during the day, the mom told Respondent that the teacher would have to call A.T. directly, because A.T. worked and her schedule changed. From that point, Respondent testified, A.T. became "in charge of everything."

In regard to communication with A.T., Respondent testified, it started with phone calls and then went to texts. A.T. can be very communicative and then be very non-communicative, Respondent explained. It would go back and forth, Respondent testified. Although Respondent preferred phone calls, it was clear to her that A.T. preferred texting and the two primarily relied on text messages. In terms of Zoom, Respondent testified, she did so once with A.T. and A.T. did not like it; the student did not like being on camera.

In regard to the texts submitted by A.T. to the District, Respondent testified that they are not all of the texts between A.T. and Respondent; that the texts submitted by A.T. "are lumped together" and there should be texts from March to October. And for example, she testified, in regard to the Slader.com text, she told A.T. a story of a former

student who used Slader. She told A.T. that it was a study tool; if Respondent can see the question, for example in a textbook and then is shown the answer, she can figure out how the equation is solved. Respondent testified that Slader did not provide answers to A.T.'s school problems. In this regard, Respondent testified, Slader is textbook based and A.T. did not have a textbook; her materials were supplied through Schoology. The texts provided by A.T. to the District are "cut and paste" presentations, Respondent testified, and do not represent the full exchanges between the two. They are "fabricated" as a result of omissions; the texts are not individually altered, she explained, but their meaning is affected by omissions.

Respondent testified that in preparation for the hearing she attempted to retrieve all of her texts with A.T. through Apple, including through subpoena, and that her efforts were unsuccessful. Respondent testified that she does not keep work related data on her phone because it takes up space, she is already paying Apple for storage and in the past, she mistakenly unintentionally sent a text to a parent and avoids the chance of doing so again by making a practice of immediately deleting school related texts.

Respondent testified that the homebound contract for A.T. states that instruction for the student should be in-home or by live stream. Respondent took the reference to "live stream" to mean virtual. (She later learned that Kingsway livestreamed classes when A.T.'s teachers notified Respondent that A.T. was not signing in to the classes.) Before she began instruction with A.T. Respondent spoke with Seibert and asked the supervisor if instruction had to be in home. According to Respondent, Seibert said that initially, instruction should be in-home, and thereafter the two (Respondent and A.T.) could work things out and determine what was best.

Respondent testified that A.T. has a lot of health issues and that very early in the process, A.T. asked if her instruction could occur virtually because A.T. often doesn't feel well. Respondent testified that she considers texting and phone calls, as well as zoom, to be virtual, and that in regard to virtual instruction, she kept both Seibert and Kingsway counselor Cappolina up to date on what was going on by phone and email.

When instruction of A.T. first began, the instruction was in the student's home and at all such times there was an adult at home, and usually more than one adult there, Respondent testified. She met with A.T. in the kitchen of the small, one story house and worked on the kitchen table. The mother worked in her office off of the kitchen or in her bedroom, Respondent recalled.

A.T.'s home was "filled with pets;" an Akita, a Pomeranian, four to five cats and rabbits. That did not bother her, Respondent testified, as she is trained in the care of animals and cares for the pets of others often. Respondent testified that only on one occasion did Respondent request that the two not meet at A.T.'s house because during a heatwave Respondent was experiencing an allergic reaction to cat hair in A.T.'s home. The two then met virtually instead.

A.T. cancelled sessions often, often three times in a reporting period. Sometime, Respondent explained, A.T. would contact Respondent on the day of their scheduled meeting and ask that Respondent not come and suggest that she would just do work and send it to Respondent. According to Respondent, A.T. was the one who on such occasions asked to be able to do the work so that she could stay on schedule. The fact is, Respondent testified, she would have been paid for cancellations on those days regardless of whether A.T. did the work or not. When asked why she was willing to allow A.T. to

call the shots, Respondent testified that A.T. had expressed that this was the first time she had been on track and wanted to stay on track to graduate on time. Respondent testified that it was in everyone's interest to keep A.T. on track; the student, Kingsway and herself. In regard to herself, Respondent explained that by keeping the student on track, the CRESS contract would be satisfied. According to Respondent; "no one made [A.T.] do math on her own; that was [A.T.'s] thing,"

According to Respondent, when instruction first began, A.T. said that her mother did not feed her right. But, Respondent testified, she observed plenty of food in the house and A.T. did not appear malnourished. The fact is, Respondent continued, A.T. was unhappy with her mother because her mother would not buy organic food from Trader Joe's. Respondent testified that on one occasion, A.T. asked her if she had any experience with DYFS, and Respondent said that she had. But A.T. never said she wanted to contact DYFS. Respondent testified that she has experience with NJ DYFS and has called on behalf of children in the past, and A.T.'s circumstances "did not at all" present a case for calling DYFS, Respondent testified. A.T. did not tell Respondent about her mom taking pills or about her mom's boyfriend punching holes in walls, Respondent testified. Again, she testified, she has no problem contacting DYFS and has contacted them in the past. But here, there was no reason to call DYFS and A.T. did not request such.

Respondent testified that A.T. told her she was the victim of "former sexual abuse" by someone close to her family and that mom had not taken it seriously. A.T.'s mother did not drive A.T. to work although she was home and had a car. Instead, A.T. had to Uber back and forth, to and from work. Respondent explained that A.T. was not happy with her mother because she blamed her mother for A.T.'s boyfriend moving

away. According to Respondent, A.T. talked a lot about her life; explaining that she wanted to live with her grandmother, but because her autistic brother already lived with her, A.T. could not move there. She also explained that her father lived out of state and had remarried and had other kids.

A.T. did not talk about “running away,” Respondent testified. What she did talk about was “changing her life, she talked about wanting to move away,” “let’s be very clear about that,” Respondent testified. A.T. had a therapist and meet with her therapist on a regular basis. After meeting with the therapist, sometime in late April or early May, A.T. left the state of New Jersey and went to Illinois to attempt to get her boyfriend back, Respondent testified.

A.T.’s Kingsway teachers and counselors absolutely knew A.T. was out of the state. She spoke to, and emailed, Kingsway counselor Cappolina about it, and communicated with A.T.’s teachers, one of whom contacted Respondent during that time wanting A.T. to meet her during office hours. Respondent testified she did not notify any CRESS supervisors that A.T. was out of town because Kingsway knew about it and it was their contract. If Kingsway had a problem they could say don’t do it; stop. But they did not, Respondent explained.

A.T. did not have a good life, she had a hard life, Respondent testified. But, A.T. never told her she was going to “run away.” A.T. did tell her a lot of stuff, and many times that she wanted “a better life.” A.T. tugged on Respondent’s heartstrings, Respondent testified, and; “that is probably why I made concessions and I did things...I bent the rules that I shouldn’t have. I worked with her however I saw fit because I was

seeing results.” When she first starting working with A.T., the student’s grades were nonexistent; single digits in all but math.

Respondent testified that she and A.T. logged onto Schoology at the same times and Respondent would monitor A.T. At the beginning, Respondent and A.T.’s Kingsway math teacher spent time getting A.T. organized and once organized, A.T. was able to handle her assignments.

Respondent testified that she spoke with Seibert about getting A.T. a third tutor; one for purposes of math. When she brought up the idea to A.T., Respondent testified, A.T. “pleaded” with Respondent not to have a third tutor, complaining that she already had two tutors and a job and asserting that she didn’t need a math tutor because she could already do everything.

In terms of time sheets, on cross examination, Respondent testified the times she used were mostly exact hours with her students. Her time when it came to A.T. were exact when done in person. For other times, her times based upon the virtual time she spent with A.T. or based upon Respondent’s review of A.T.’s work and estimates of the time it would take. With math, A.T. never once asked Respondent one question.

In terms of prep work, and cancellations, Respondent testified that she signed the forms. When she met with A.T. at her home, she gave the verification forms to A.T. who took them to the other room and had her mother sign for single or multiple meetings. The only signatures on the verification forms containing her own initials, Respondent testified, are for cancellations and prep times. All HBI signatures are A.T.’s mothers with the exception of one June HBI signed by A.T.’s 20-year-old boyfriend who sat with them the entire four hours of instruction. Respondent initially explained that the only other

non-mom signatures on lines for HBI are on April 4 and 5. For those days, Respondent explained, because A.T. thereafter cancelled meetings on the bottom of the form (April 9 and 10), Respondent was not able to get the forms to the mom, so she called A.T.'s mom and asked for her permission to have someone else sign to verify the April 4 and 5 meetings, because the sheets were due. The mother gave permission for Respondent's assistant to sign for the mom. The assistant then signed the assistant's name – not A.T.'s mother's name. After giving this explanation, Respondent was asked to look carefully at the form she had just testified about dated June 15 and state if the signatures for April 4 and 5 were those of her assistant. Respondent then corrected herself and testified that no, her assistant's signatures were on the next form dated April 30. When examining that later form, Respondent testified that the HBI dates of April 16, 17 and 18 were signed by her assistant with the student's mother's permission because by the time the forms had to be submitted, A.T. had left for Illinois.

According to Respondent, the remaining verifications through June 13 state "HBI virtual" and were signed by herself. The remaining "HBI" lines were all signed by A.T.'s mother with the exception of June 30 which was signed by A.T.'s boyfriend.

For the 2021-2022 school year, Respondent was contacted by Seibert and asked if she was interested in teaching A.T. again for the upcoming year. Respondent initially said no, thought about it and called Seibert back and gave two conditions to her agreeing to continue with A.T. First, Respondent had a feeling that A.T. was not happy with Respondent and wanted the supervisor to contact Kingsway counselor Cappolina and ask if there was any objection on A.T.'s part. And second, that all instruction would have to be virtual as Respondent was having work done on her home and had to be present.

According to Respondent, Seibert got back to her and said everything was fine and virtual was acceptable. Respondent thereafter contacted teachers and made efforts to contact A.T.'s mother. According to Respondent, eventually A.T. texted Respondent that she was excited to start the new year, it being her senior year. Respondent then had contact with A.T. and told her the instruction would only be virtual. A.T. responded that she did not do well on line and wanted to have an in-person tutor. Respondent forwarded A.T.'s text to Cappolina, then offered to meet with A.T. virtually for science (in Respondent's mind while another tutor was sought; a thought not expressed to A.T.) A.T. did not respond to Respondent and the next thing Respondent knew she was in an October 28 meeting.

Respondent testified that she found out about the October 28 meeting at the CRESS offices on the day of the meeting, having received a call from the principal's secretary saying the meeting "would be quick," She learned the subject of the meeting during the meeting when she was given a copy of A.T.'s email complaint. After the manager's read the letter from A.T. to her, she was upset and angry. Her work with A.T. for the 2021-2022 year had been completed months before and had been successful; the challenged student had passed, Respondent testified. Respondent testified that at the meeting she was taken by surprise. The managers asked about whether she was at A.T.'s without a parent present. She responded that she would never do that, that there was always someone over 18 in the house. She recalled that one of the managers made a reference to "forging" a parent signature, and Respondent testified that she told the managers that she would never sign someone else's name and had not done so.

Respondent testified that she believed – since her meeting was a mere 10 minutes long and caught her by surprise – that the investigation would continue. But, she heard nothing further from the District, except a phone call from her building principal informing her that she would be placed on administrative leave “pending investigation.”

Respondent testified that she did not intentionally falsify time sheets in order to get paid for work she did not perform; she did not misrepresent the work she performed in order to get paid; she did not intentionally sign someone else’s name in order to get paid; she did not sign someone else’s name; She did not deprive A.T. of any learning for Respondent’s convenience; she did not deprive A.T. of any learning. Respondent testified that if she could go back in time, she would not have accommodated A.T. all the many, many times Respondent accommodated the student’s requests to delay and not meet, etc., because the student said she “didn’t feel good” or “had a doctor appointment” or “was tired,” etc. She would have just written “cancelled” on the forms. By doing so, Respondent explained, she would have still gotten paid and wouldn’t be in this mess; although the student wouldn’t have gotten the direction and attention she needed. But, Respondent testified, she felt awful for the kid, A.T. “had a shitty life,” but she really wanted to work and was able to do so even when she had her illness issues.

Respondent testified that she never actually saw A.T.’s mom sign any forms; that A.T. would take the forms to her mom and come back with them signed. Respondent testified that she always saw A.T.’s mom in the house when she was there; sometimes in her office on the phone other times walking by the kitchen door. She testified that she could get in contact with the mom, although sometimes it took time; “hours, days, weeks.” When asked why she did not have the mom sign the forms when A.T. was away

– as the mother was always home – Respondent testified she signed them because A.T. was virtual and Respondent would do as instructed, write “HBI virtual” on the forms and sign her own name.

The contract said start in person and then go live stream, Respondent confirmed. She went on the testified that early on they did one session virtual and she asked Kingsway counselor Cappolina if virtual was okay, and Cappolina told her yes, that she should do what works with the student. In addition, CRESS program manager Emily Seibert also told Respondent in regard to A.T., to start home-bound and then go from there. The contract, Respondent testified, says after HBI, speak with mom and teacher and get a better game plan. That is what she did, Respondent testified; she spoke to mom, emailed A.T.’s teachers and spoke to Cappolina. Respondent testified that, because of the student’s needs, the eventual game plan was dictated by A.T. Respondent testified that counselor Cappolina and program manager Seibert knew how she was working with A.T because she had telephone conversations with both of them. She recalled Cappolina even commenting about wondering how the student could manage having a job and going to work, but couldn’t go to school in person.

In regard to April 16, 17 and 18 signatures by her classroom assistant, Respondent testified that she first called A.T.’s mom and asked if Respondent could have her classroom assistant sign for the mom, and the mom gave permission. Respondent testified that she did not want to sign the form herself because then the program would ask questions and not pay her; she wasn’t not going to get paid for 17 hours of work, Respondent explained.

A.T. was an unusual case, Respondent testified, unlike any other. Things worked early on as A.T. was communicative. But as the summer went by, the student became more and more non-communicative, and Respondent initially decided she no longer wanted to work with the student. She eventually changed her mind in the fall of 2021 because she knows A.T. can work hard, the subjects she was asked to teach A.T. in the autumn were all well known to Respondent and Cappolina had informed Seibert that A.T. had no problem with Respondent teaching her.

In regard to Slader.com, Respondent testified that she told A.T. the web site could show here examples on how to work on problems. The website did not give answers to any homework or tests for A.T. Respondent testified, Slader.com was not an answer key for any of A.T.'s instructional materials. The problem was that when Respondent first began with A.T., the student's math grade was low; a failing grade. (All her other grades were "0.") However, with organization, printing out all of her assignments and putting them in folders at the beginning of her tutoring. and Respondent's monitoring the student when she worked, A.T. quickly improved. A.T. couldn't, or didn't, improve on her own. She needed someone to manager her. She ended up with almost an "A" in the algebra class. A.T. took the math folders with her to Illinois. Respondent testified that A.T. did not need Respondent "teaching" her math; A.T. needed Respondent's guidance as A.T. was not going to do the work on her own.

Schoology is very confusing and there is a lot of content, Respondent testified. Schoology works in three different sections. First, there are supportive assignments that are the least weighted activities; they are more fun, or could be videos. Then there are secondary assignments and study pages. Then there are primary assignments that may be

projects or tests. In math, the primary assignments are only tests. There are exercises to go through, which A.T. did; sometimes a few minutes at a time, sometimes for hours. Respondent agreed that Kingsway was basically paying her to be a kind of “nanny” for A.T., as far as math was concerned. Schoology was, in effect, the lesson plan for A.T.

A.T. did “not once” ask Respondent how to work out a math problem. With organization and guidance from Respondent, A.T. flourished, Respondent testified.

Emails

The parties agreed to the submission of 410 pages of emails relating to A.T. and/or Respondent’s work with A.T. during the 2020-2021 and 2021-2022 school years. Many of the emails are repeated as a result of “email chains.” One email chain reflects the initial process by which A.T. was assigned her first home instructor for the 2020-2021 school year. The chain begins with an October 9, 2020 email from Cappolina to Seibert providing:

Good afternoon Emily.
Do you have updated home instruction form?
Will one of your home instructors, preferably Kathy Simnor, be available to oversee / monitor 6 subjects (English III, US History II, Biology, Algebra II, Intro to Computers). Your instructor can meet/check in with students and teachers via Zoom.
Kathy conducted home instruction last year for this student.

Seibert replied October 15, 2020;

Hi John,
Attached is our form. I wrote Kathy to see what her thoughts would be. I am assuming this is A.T.? Is she attending school, just needs someone to keep tabs on all of her work? I’m not sure Kathy would be comfortable with the Bio, Alg II, and Computers if it involves instruction of any kind. But if it is for check-ins with student and teachers, and minimal instruction in those areas, she may feel comfortable. The other option would be to split, but I’ll see what Kathy says.

Does the student attend any in person learning, or is it all remote?

The same day Cappolina replied:

...Yes A.T. Currently, all remote.

The next day Seibert wrote back:

Hi, Kathy said she would take it! If you would like to move forward, please send the form at your earliest convenience.

The next chain reflects the process by which Respondent began providing A.T. instruction in March 2021, and begins with Cappolina and Seibert having the following email exchange on March 2:

Cappolina:

Good morning,
Are your teachers instructing in person or virtual?

Seibert:

Hi John,
We have a combo...it really depends on what the family wants, what our teachers feel okay doing. So depending on the case, we can try to match up something if we can.

Cappolina:

Thank you,
Would Kathy be interested in instruction at A.T. in person?

Seibert:

She may...I'll have to reach out to her. She has been one of my staff that was not interested in going into homes for new cases. But since she has a history working with her, knows the home environment. etc, she may be ok with it. Could you share how many hours and for what subject?

Cappolina:

Good Afternoon,
Student is behind and needs someone to monitor / check in with all subjects. All her Kingsway teachers are available virtually as they teach live via Zoom. Teachers also have office hours. However, A. needs help / instruction.

English III
US History II
Biology
Algebra II
PE II
Intro to Computers

Thank You

On March 3, Seibert continued the exchange:

Hi John,

Kathy is not interested at this time to go into A.'s home at this time. She is still not comfortable being in close quarters instructing.

I can ask some of our other instructors, there may be interest! I just would like a little more clarification on what is needed. Does she need help in all subject areas, or only in certain ones? Is she getting on her live instruction with her teachers daily, and this is just supplemental? Any more info you can provide would help me in deciding which direction I go next with asking our staff.

On March 4, Cappolina responded:

Her attendance has been very inconsistent so she doesn't attend her live stream instruction. She is behind in every subject and most likely will need help in all subjects, however, she can probably catch up quicker in PE and Computers. We want her to attend her daily live stream instruction so you would be supplemental. However, we can recess [sic.] later to see if more instruction is needed.

Seibert, the same day:

So how many hours would you be asking for?

I can most likely find a teacher for this...why don't you fill out the HBI form and I can officially start working on it!

On March 8 Cappolina sent the form to Seibert, noting he was still awaiting final

approval on his end, and added:

Typically, A. should be live streaming her classes on Monday, Tuesday, Thursday and Friday. PE/HE is all independent work. Wednesday is Asynchronous.

A. Is very behind.

Cappolina again wrote to Seibert on March 12 and the two had the following exchange that day:

...Home instruction was approved.

Did you find instructors?

Would full time in person home instruction be an option?

Seibert:

What do you mean by full time? Like full time in-person for the X number of hours per week?

I did not pursue it much further because I was waiting on more of the details back that I put in the last email to you 3/4/21. I really need to see the full picture of what is needed.

Cappolina:

...Yes. Do you offer full in person for x numbers of week? [sic.]

Seibert:

We would, if I can find a teacher or two that can take all the classes and be ok with going into the home. I have one that is interested but I don't know that she would be able to do the upper level science and math. I obviously want to get a teacher that is knowledgeable in the content so that A. is getting the support she needs. If it is just someone being the

communicator/liaison between the teachers from school and motivating A. to do her work, it wouldn't be as hard. But when its having a teacher that is competent in all of the subject matter, it gets more complicated obviously.

Cappolina:

Great!

Please keep me posted as we prefer full time home instruction. After they contact student, we may have to increase the amount of hours.

I prefer in person however, still interested in 1 teacher instructing a few subjects in person instruction and another teacher to coordinate.

Seibert:

So can you please submit the request for services form that I have the information to reference? Please put the total number of hours you are asking for per week. and any other important details!

Cappolina:

Great!

Form is attached. Please keep me posted.

We can also increase hours if necessary. Most likely we will extend home instruction.

On March 15 Cappolina checked in with Seibert asking how it was going, and

Seibert answered:

Hi John,

If I assign a teacher that would be willing to coordinate with teachers and provide for all subjects she was comfortable with and get her started in there...could she then give us feedback on what she would want me to find another teacher to help with (like her strengths are English, History; she could probably do the PPE/Health, maybe computers). But if we need someone else

to come in for the Bio and Math. I can do that. I just would like to at least get someone in there to feel our situation!
Let me know and I'll get going with everything tomorrow if you like the plan!

The next day Cappolina answered; "Yes, that sound like a game plan. And please keep me posted if we need someone else for the other subjects.

On March 17 Seibert wrote Cappolina:

Hi John,
I just wanted to check on a few things...I have all subjects covered.
Jill Mansor will be doing English III and US History II.
Alix Gillespie Tyson will be doing the remaining subjects.
Does this mean that A. will only receive instruction through them, or is she still encouraged to get onto the Kingsway classes? Jill will have hours during the school day to instruct (I don't know if the study hall time will work be she had another student right in that same period 5 day per week). I'm thinking after the other student she would work with A. Alix is available after school hours only. So they will coordinate with the mom. I just want to be able to lay out what they can expect to be doing with her and encourage her to do as part of receiving instruction through us.
Also, can I have the teachers names ...

Cappolina answered:

A. Can receive instruction through home instruction only, however, if she wants to attend her classes live stream she can. Maybe at first primary home instruction and phase to live stream. However, after your teachers speak with mom can get a better plan.

During the time Respondent was assigned to A.T., the record also contains an email from Respondent to A.T.'s math teacher and copies to Cappolina providing, among other things; "[A.T.] read your emails to me. She is away with family issues – far away! [A.] failed to tell you she is in different time zone. She is not available for your office

hours as that would be very early and she is dealing with A LOT! Returning around May 11.”

The Student Information sheet describing the services CRESS was to provide through Respondent’s efforts for the period March 8 through April 5, 2021 states:

[A.T.] can receive instruction through home instruction only, however, if she wants to attend her classes live stream she can. Maybe first, primarily provide home instruction and phase into live stream. After HBI’s speak with mom and teachers, can get a better game plan.

Arguments of the Parties

The parties submitted lengthy and detailed post hearing briefs presenting factual and legal arguments on the Tenure Charges; briefs that have been fully and carefully considered by the undersigned and will only be summarized herein.

Position of the School District

The District asserts that the evidence supports its tenure charges. Respondent committed serious misconduct by fraudulently billing a sending district for services she did not provide. Such misconduct warrants dismissal. Respondent accepted a contract to provide in-person, one-on-one instruction to A.T. Respondent did not provide the instruction she agreed to provide and instead engaged in conduct that violated several GCSS District policies on home-bound instruction, supervision, reporting, and communications with students. Rather than instructing A.T., the evidence establishes that Respondent provided effectively no instruction to the student for algebra despite accepting a contract to teach the student algebra and billing for algebra instructional time.

Respondent repeatedly admitted at the hearing that she was not good at algebra and assigned A.T. independent work to complete and then billed the work A.T. did to the

sending district as instructional time. Respondent admitted that when it came to algebra, she viewed her role as one of facilitating independent study by A.T. and assisting the student get organized as the student herself self-progressed through her assignments. Submitting time sheets that misrepresent the hours of instruction Respondent actually performed and/or representing that the time student A.T. spent working alone on assignments as “instruction time” is inherently fraudulent and misleading. Respondent’s misconduct damages the District’s relationship with one of its largest sending districts.

In addition to fraudulent billing, the District has shown that Respondent violated a number of other important District policies. In such regard, the record shows that Respondent failed to communicate to Kingsway School District that A.T. was having serious life issues. Such included A.T. saying she was going to run away; A.T. had asked Respondent about contacting Child Protective Services, and that A.T. had left the state for almost three months. In regard to A.T.’s out-of-state absence, the record establishes that rather than directly and clearly informing Kingsway and her own District that the student had left the state, Respondent instead made a few casual “she’s out of town” references to Kingsway teachers and counselor suggesting that A.T. was merely on vacation.

At the hearing, A.T. credibly testified that several signatures on time verification sheets purported to be that of her mother, were “scribbles” by Respondent; conduct Respondent admitted to doing during the District’s investigatory interview of the teacher. A.T. also testified that Respondent provided her no in-home instruction during the month of June, but billed for several in-home sessions with A.T. during that month.

During the initial communication between Kingsway counselor Cappolina and the District, Cappolina wrote that A.T. was to receive “instructions through home instruction only” and added that if A.T. wanted to attend classes on live-stream she was welcome to do so. Cappolina went on to write; “Maybe at first primarily provide home instruction and phase into live stream. After HBIs speak with mom and teachers, can get a better game plan.” The emails further show that Cappolina instructed that if the District instructor was only able to coordinate A.T.’s subjects, the student would still need to attend live-stream classes. Respondent did not comply with Kingsway’s instructions.

The texts submitted by A.T. during the investigation also established that Respondent engaged in false billing. The texts show that Respondent would ask A.T. to text Respondent copies of the student’s completed math work so that Respondent could log time as actual instruction. Not only did the texts establish that Respondent billed for “instruction” time that did not occur, but they also establish that Respondent violated the District’s policy against teachers texting students. Thus: (1) on April 8, 2021 Respondent texted A.T. and suggested A.T. needed a “breather,” and further stated that Respondent would give A.T. credit for working on her own. Despite the fact that such amounted to Respondent cancelling a session with the student rather than the student cancelling the session, Respondent billed Kingsway two hours for the cancelled session. (2) on April 22, Respondent asked if the student had done any algebra, suggesting if she had, she could send it in “we can count it.” and get credit. A.T. replied “ok” and added that she could not meet anyway because she felt ill. Respondent then billed Kingsway for two hours on virtual instruction. (3) On April 27, Respondent again texted A.T. saying “just take a pix of algebra for credit.” (4) on April 29 A.T. cancelled a lesson and offered to work on her

math, and Respondent agreed and billed for virtual instruction. (5) On June 8 Respondent merely received a screen shot text of work from A.T. and nevertheless billed Kingsway for two hours of virtual instruction. And (6) on May 1 Respondent texted A.T. stating that it was important that A.T. complete her work for her contract to be renewed.

Respondent also acted unprofessionally by directing A.T. to use the Slader.com website; a website where students can search for answers to homework and tests.

Respondent also violated District policy by meeting with A.T. without a parent being in view during instruction.

Respondent's conduct amounts to "unbecoming conduct" under controlling tenure law. Respondent's submitting bills for work not performed has a tendency to destroy public respect for the District's program and damaged confidence in the operation of its home bound services. As results of Respondent's conduct, the District had to apologies to Kingsway and reimburse that district.

Kingsway did not seek a "coordinator" to assist A.T. If she was not qualified to teach the subjects A.T. needed, Respondent did not have to take the Kingsway work that sought full-time, in-home instruction. Respondent admitted on the witness stand that she "bent the rules" and "probably should not have." Contrary to Respondent's claim that she took her actions only to help A.T. out to get "credit" and points for grades, the evidence establishes that Respondent also benefits from such "credit" by billing Kingsway- the time it took A.T. to do work - for "instructions time" that did not occur.

Respondent admitted to billing Kingsway for dozens of hours of instruction Respondent did not perform. A public employer may demonstrate a teacher is unfit for employment with a sufficiently flagrant single incident of misconduct. New Jersey courts

have long recognized that misrepresentation and fraud are sufficient grounds for dismissal. Here, Respondent's conduct was severe and meets the legal standard for conduct unbecoming a public employee. On top of such, Respondent also plainly violated the District's cell phone use policy and care policy by failing to report A.T.'s complaints of abuse and questions regarding Child Protective Services. Finally, Respondent unilaterally abandoned the terms and goals of the District's contract with Kingsway by deciding on her own to cease in-home and go to virtual instruction with no conversation with or approval by, Kingsway. The tenure charges against Respondent for conduct unbecoming and misconduct must be sustained.

Position of Respondent

Respondent maintains that in an unbecoming conduct tenure case, under the *Fulcomer* standard, the arbitrator must first determine whether the employee engaged in the conduct charged, and if such a finding is made, go on to determine the appropriate penalty weighing a number of mitigating factors. Here, the District has not proven that Respondent engaged in, and had the intent to commit, the fraud, theft or forgery alleged. Additionally, the District has not shown just cause for its decision to terminate Respondent.

The District failed to conduct a complete investigation. Instead, the District took A.T.'s October 21, 2021 email to be true on its face. The only person the District "interviewed" was Respondent on October 28, 2021. That 10 minute meeting was not scheduled in advance or with notice to Respondent and, considering the broad and serious claims presented by the student, understandably caught Respondent and the Union's representative off-guard. The District attempted to claim that its investigation was

complete because Respondent admitted: to having “scribbled” the student’s mother’s name on verification forms; that the mother was not always home when in-home instruction took place; and that Respondent stated that A.T. had to “run away” from home. Respondent credibly testified, and attending Union president Danielle Davis confirmed, that Respondent made no such admissions during the ten-minute meeting. Moreover, Respondent was never given the opportunity to confront A.T., and the District admitted that it did not interview any Kingsway teacher or the Kingsway counselor. Nor did the District review all of the text messages between A.T. and Respondent – instead relying upon the A.T.- selected and incomplete texts – and did not review the hundreds of pages of emails in the District’s own records showing communications between Respondent and the Kingsway counselor and Kingsway teachers relating to the efforts of Respondent.

Respondent did not “deprive” A.T. of her education, and it is not true that A.T. “learned absolutely nothing.” Respondent was hired to motivate A.T. to complete her classes. At the time Respondent began working with A.T., the student had a grade of 44 in algebra and “0” in other subjects. After Respondent’s efforts, the student passed all of her classes, including receiving a high B in algebra and was promoted to her senior year. Clearly, Respondent did not “deprive” A.T. of her education.

The March 2021 email exchange between District Homebound program manager Seibert and Kingsway counselor Cappolina establishes that Respondent was contracted to monitor/check in with A.T.’s Kingsway teachers concerning A.T.’s progress, communicate/coordinate with A.T.’s teachers to obtain A.T.’s assignments from Schoology, and motivate A.T. to do the work. A.T.’s algebra teacher expressed no

concern at Respondent's lack of proficiency in algebra because everything the student needed was on Schoology and what the student needed was motivation. The fact is, the scope of Respondent's role as homebound instructor for A.T. in algebra was mutually understood by Kingsway and the District to be different.

As for the District's claims relating to texting the student, and signing for virtual homebound instruction, the record fails to establish that Respondent ever received onboarding training or a copy of the homebound related manual relied upon by the District to establish its policies. Moreover, both Respondent and Davis testified that they had not seen the CRESS employee manual. Additionally, Respondent testified without contradiction, that CRESS program manager Seibert told Respondent to sign her own initials on the verification form for any virtual homebound instruction, and that Seibert was also made aware that Respondent communicated with A.T. via text messaging using the teacher's cell phone. It is also thus false that Respondent submitted verification forms stating that she performed in home instruction when she had not gone into the student's home. The forms themselves indicate that the time in question was "virtual." Nor did Respondent, or anyone else sign any name other than their own. No signature was "forged."

Contrary to the claims of the District, Respondent was never in A.T.'s home without her mother being at home. Importantly, the allegation raised at the hearing that A.T.'s mother was not present during in home instruction by Respondent, was not included in the Tenure Charges. Similarly, other reasons offered by the District at the hearing for terminating Respondent were not included in the Tenure charges, including claims that A.T. was subject of neglect or abuse.

As for the issue of Respondent's use of cell phone to communicate with the student, the District's policy allows such if directed to do so by a parent. Here, Respondent testified that A.T.'s mother instructed Respondent to contact the student by text, and when A.T. was asked if her mother told Respondent to contact her by text, A.T. testified; "I guess." District manager Seibert also knew Respondent was engaged in texting with the student and never objected to the conduct.

To find forgery, neglect of duty, fraud or theft by deception requires a finding that the acts in question were intentional, made knowingly and purposeful. Respondent did not have such intent. Moreover, for many of the instances of falsely claimed instruction time identified by the District, the record establishes that Respondent would have received the same payments due to the student's untimely cancellations on the days at issue. No harm was done to either the District or Kingsway.

Respondent met the terms of the contract with Kingsway and was successful in moving A.T. from a failing student to a student who was able to move onto her senior year. The Tenure charges should be dismissed.

Discussion

The District bears the burden of proving its Tenure Charges. Based upon careful consideration of the record as a whole, including all testimony and other admitted evidence and the arguments of the parties, I find that the District has failed to establish the truth of its tenure charges against Respondent sufficient to support termination of Respondent, but has met its burden sufficient to support a warning to Respondent.

Credibility

Determinations relating to credibility involve not just conclusions on whether a witness is out-and-out lying or telling the truth, but to an even larger extent, whether the testimony of the individual can be relied upon as an accurate reporting of what did or did not occur in the past. Reliability of a witness's recollection can be impacted by a plethora of factors, such as passage of time, intervening events in the life of the witnesses, the number of times a witness has gone over the events in his or her head, the interests of the witness in recalling events in a way that puts the witness in the best light or advances the witness's interests, a witness's health, substance use, intelligence, age, perspective, environmental factors at the time of an incident, the unusual character of an event, and on and on. When making credibility determinations in this matter, I have reviewed the testimony of witnesses in detail; painstaking detail. In crediting and discrediting all or portions of individual witness testimony, I have considered the consistencies and inconsistencies between various witnesses, the vagueness of testimony, the certainty of testimony, the likelihood of events occurring under the circumstances and the demeanor of each witness. I have also given due consideration to written communications of individuals involved, the absence of prior-recollections-recorded, and the failure to call witnesses with knowledge of the events at issue.

Based upon such considerations, I am persuaded that:

(1) Administrators Monti and Lamonica had little knowledge of the underlying events at issue and assumed as established fact the content of the email of A.T., and in doing so, were inclined to perceive statements by Respondent during their very brief October 28 meeting as supporting their own preconceived conclusions

relating to events. Consequently, the District's investigation of this matter was inappropriately truncated because the two administrators were of the mistaken view that Respondent admitted to the most damning allegations made by A.T. The two, along with Superintendent Dicken, presented testimony about training and onboarding of CRESS staff; testimony about how onboarding should be done, but no testimony as to their respective first-hand experiences with the process. The administrators were consistent in testifying that onboarding materials that set forth the rules and policies for employees are subject to employee "sign off" indicating receipt. (No such acknowledgement of receipt by Respondent was offered into evidence.)

(2) A.T. was, to a degree, sincere in her testimony, but in regard to various issues was not reliable. I found A.T. attempted on occasion to offer answers to questions that were not in her recollection. Thus, in answers to a number of questions I find that A.T. made educated guesses and presented probabilities rather than specific recollections. By way of example in such regard, in her testimony relating to what she told Respondent about her home life, A.T. testimony included numerous responses that she "probably" told the teacher this and that about various issues in her home life and the student's historical challenges. I also found A.T. to be inclined to promote and exaggerate her own efforts and discount the many, many challenges her own unusual circumstances and conduct presented to Kingsway, the District and Respondent. In this regard, A.T. testified that Respondent's efforts to organize, monitor and direct her in algebra were of no value. Instead, A.T. was all too willing to conclude that her journey from a failing 44 grade in

algebra in late March to a high B at the end of the school year was entirely because of the student's own effort. Contrary to such claims by the student, the selected text messages A.T. offered the District reveals a student who constantly offered excuses not to meet with Respondent or to not do her work and made ongoing efforts to delay and procrastinate engaging in her school work, and a teacher who continually – and in the medium preferred by the student – pushed, cajoled and directed the student to finish tasks. Additionally, I find that A.T. offered testimony about whether and when she met with Respondent either in person or by text or phone, even though the student did not have specific recollections of dates and times. For example, A.T. offered that she could not have met with Respondent on a day because A.T. had travelled the day before and “would have been tired,” and that she did not meet Respondent whatsoever in June, but then admitted she did meet with her in-person at the end of June for a four-hour session attended by her boyfriend. Additionally, and contrary to her own testimony that she did not have interaction with Respondent in June, the selected text messages she offered the District contained communications with Respondent on four different dates in June and for which Respondent billed.;

(3) Respondent also was prone to summarize, exaggerate and avoid specifics. At times when questions were asked that appeared to make her uncomfortable, for example when she was being examined by either counsel about her billing practices, she often talked over counsel and rambled. She was emotional at times, and although such is not unusual for a witness in her position, strong emotions can impact the ability to dispassionately recall events. That being said, in support

of her credibility, I found Respondent was willing to make admissions and be candid in her testimony about events even though they affirmed aspects of the District's argument, such as that she; (a) bent the rules to accommodate the challenging student, (b) did not feel she had the knowledge to teach the student algebra and (c) essentially performed the work of a "nanny" to direct and help A.T. exercise her own talents to succeed in algebra.

The Tenure Charges Themselves

The District's Charge of unbecoming conduct is substantially narrower than the case the District presented at the Tenure hearing. Charge 1 references Respondent's conduct relating only to algebra, and identifies five relatively specific forms of conduct or violations of District policy. As a general rule in such matters, an employer is held to have known the reasons for the termination at the time it makes the decision to terminate. Reasons that are added thereafter, particularly when based upon facts known or available to the employer at the time of the decision to terminate, are often viewed by arbitrators as admissions that the original reasons for the termination were not sufficient to satisfy the employer's burden.

In regard to the District's first Charge, the Charge alleges: (1) That Respondent unilaterally failed to comply with the in-person only instruction requirement of the District's contract with Kingsway and gave herself "credit for performing instruction in A.T.'s home, even though she was not actually present;" (2) That in conversation with Respondent, A.T. threatened to run away out of state with her boyfriend and Respondent violated policy by failing to report the threat; (3) That Respondent violated policy by

using her personal cell phone to communicate with A.T. by calls and text messages; (4) That Respondent received pay for services she was not entitled to receive “as a result of fraud,” and (5) That Respondent engaged in fraud by accepting pay for home instruction of A.T. that A.T. did not receive, and thus, “the CRESS program was forced to refund all of the fees paid by Kingsway for A.T.’s instruction in 2021.”

(1) That text messages between A.T. and Respondent, combined with “falsified parental forms” established that Respondent was giving herself credit for performing instruction in A.T.’s home, even though she was not actually present.”

The District asserts that the contract with Kingsway for services relating to A.T. required in-home instruction only, and that Respondent unilaterally determined to not comply with the contract and to interact with A.T. in ways and manners other than in-person. The District also asserts that Respondent falsely claimed she performed work in the home of A.T. when, in fact, she was not in the student’s home.

In regard to the contract claim, Respondent testified that the contract provided that “after HBIs speak with mom and teachers can get a better game plan.” Consistent with the contract, Respondent testified, she initially instructed A.T. in the home, thereafter discussed matters with both CRESS program manager Seibert and Kingsway counselor Cappolina and was told by both Seibert and Cappolina that: (1) Respondent should “do what works” to help the student along and (2) that if instruction was done virtually, Respondent was to indicate such by writing “HBI virtual”⁷ in the activity space of the parent verification form and sign her own name. Respondent testified that through

⁷ Administrator Lamonica similarly testified that when the District went virtual during Covid, CRESS instructors were told to write “virtual” on their verification forms. She further testified that Seibert would have been the one who communicated such to employees.

emails and phone calls, she kept both CRESS program manager Seibert and Kingsway counselor Cappolina informed of her interactions with A.T. and her methods of organizing and guiding the student so the student could keep up with her algebra assignments. Respondent admitted that she is not good at math, testified that A.T. was better at math than was Respondent, and testified that she made her challenges in that regard clear to Seibert, Cappolina and A.T.'s math teacher. Early in the process, Respondent testified, she requested that Seibert find another teacher to teach A.T. algebra, but that because of strong objections from A.T. and the student's insistence that she could get through the class herself, Respondent did not push for another tutor. Respondents also testified that she told both Seibert (who she talked with on an ongoing and frequent basis) and Cappolina, that when it came to A.T. and math, Respondent was performing a guidance, organizing and motivational function; she was not giving direct math instruction to the student.

The District has argued that neither Kingsway nor the District had any idea that Respondent was not engaged in direct instruction of algebra with the student. Under the circumstances, I find the District has a substantial interest in presenting evidence contrary to Respondent's claims that both Cappolina and Seibert authorized the teacher to engage with A.T. virtually and to monitor and guide – rather than directly instruct - the student when it came to math. Notwithstanding such a strong interest, the District did not call either Cappolina or Seibert to testify. In this regard, there was no showing that Seibert, an employee of the District, and Cappolina, an employee of one of the District's most important sending districts, were not available to testify. Considering the importance of the testimony of these two witnesses to a determination of determinative facts in this

matter, I am persuaded that the District's failure to call the witness is sufficient to raise an adverse inference that if called, Siebert and Cappolina would confirm the testimony of Respondent.

Consequently, I credit Respondent's testimony that she was told by her program manager and the Kingsway counselor that she could teach A.T. virtually and to write "HBI virtual" and sign her own name on the verification form when such occurred. I also credit Respondent's testimony that she was directed to do whatever worked for A.T. and that the two employees of both districts, Siebert for the District and Cappolina for Kingsway, knew generally how Respondent was approaching the task presented of attempting to move a very challenging and eminently problematic student along, and agreed with Respondent's approach.⁸

⁸ In addition to the adverse inference, I also find in support of my finding as to knowledge of the methods used by Respondent, the content of email exchanges between Cappolina and Siebert leading up to the engagement of Respondent. For example;

Siebert:

We would, if I can find a teacher or two that can take all the classes and be ok with going into the home. I have one that is interested but I don't know that she would be able to do the upper level science and math. I obviously want to get a teacher that is knowledgeable in the content so that A. is getting the support she needs. ***If it is just someone being the communicator/liaison between the teachers from school and motivating A. to do her work, it wouldn't be as hard.*** But when its having a teacher that is competent in all of the subject matter, it gets more complicated obviously.

Cappolina:

Great!

Please keep me posted as we prefer full time home instruction. After they contact student, we may have to increase the amount of hours.

I prefer in person however, still interested in 1 teacher instructing a few subjects in person instruction ***and another teacher to coordinate.***
(Emphasis added.)

In this regard, the record establishes that Kingsway had prior experience with the student, had settled in the past on a teacher just trying to monitor and encourage the student, had originally envisioned such would be the case again in the spring of 2021 for A.T., and that although Kingsway wanted initially to have the student receive full-time, in home instruction, the monitoring and encouragement strategy that Respondent proposed after initially meeting with

To support its claim that Respondent “falsified parental forms,” the District relies upon parental verification forms that it claims contain “forged” signatures of A.T.’s mother; signatures that the District asserts were “forged” by Respondent. Considering the records as a whole, I am not persuaded that the District has met its burden in this regard. First, many of the signatures initially identified as having been forgeries of A.T.’s mother’s do not purport to be the mother’s name. Upon general examination, they present the names or initials of persons other than the mother. Not purporting to be the signature of anyone other than the signer, the signatures do not meet the definition of forgery.

Also in support of the falsification allegation, the District relied on the testimony of CRESS administrators Monti and Lamonica that during their October 28 meeting with Respondent, the teacher admitted to forging the mother’s signature by “scribbling” the mother’s name. I do not find that Respondent admitted to the CRESS managers during her brief October 28 meeting that she scribbled the name of A.T.’s mother on the forms. The notes of the meeting co-authored by Monti and Lamonica provide that Respondent said she just scribbled “a” signature on the forms, and both Respondent and Davis testified that Respondent did not make such an admission. In addition, I find that such an admission is unlikely under the circumstances where, as here, the forms themselves establish that Respondent had written her own name on the forms.

The District also relies upon the testimony of A.T. who identified signatures next to “HBI” designations purporting to be that of her mother, but she testified are not her

A.T. in the home would have been consistent with the strategies discussed in emails between Cappolina and Seibert as well as the way the districts had attempted to deal with the challenging and distinctive student in the past.

To be clear, I am not finding based upon parol evidence that the original contract included such strategy. Instead, I find the two districts would have been receptive to consistent oral modifications of their understanding.

mom's signature. A.T. so identified signatures for March 28, April 5, 6, and June 14 and 15. As for March 28 and April 5 and 6, I find the signatures are sufficiently alike the undisputed signatures of A.T.'s mother so as to support a finding, which I make, that the District has not met the burden of establishing that they are forgeries. As for the June 14 and 15 signatures, they are ambiguous as to who they purport to be. I find based upon the full record, that whether or not the June 14 and 15 signatures are the signatures of A.T.'s mother, signatures of another adult or an effort to mimic the signature of the student's mother, is not sufficiently established by the record for me to make a finding. As the allegation is forgery, and such an allegation places the burden of proof firmly in the lap of the District, I find the District has not met its burden of proving the allegation.

I also find that Respondent's conduct of writing "HBI virtual" on the verification forms was not intended to, and did not as alleged by the District, communicate a false claim that the teacher taught in the student's home on such occasions. The presences of the handwritten phrase "virtual" in the "Activity" columns of the verification forms for the dates and times at issue, in and of itself, contradicts the District's claim that Respondent misrepresented that she was in the student's home on the dates indicated.

The District has failed to establish as true this portion of Charge 1.

(2) That in the presence of Respondent, A.T. threatened to run away out of state with her boyfriend and that Respondent violated policy by failing to report the threat

In addition to the "runaway" allegation contained in Charge 1, at the hearing the District added allegations that A.T. also told Respondent that she was being abused, had asked Respondent about NJ DYFS and had discussed violence in the home involving her mother's boyfriend, and that Respondent violated policy by not reporting such to her

supervisors at the District.⁹ Although A.T. testified that she talks a lot and “told everything” to Respondent and answered “yes” when asked if she told the teacher she was considering running away, I do not find that the District has proven this aspect of its Charge 1. First in this regard, as explained above, A.T.’s testimony included too many “probably” answers when it came to what she may have told Respondent about her family life to rely upon her testimony as affirmative and reliable representations of fact.

Second, A.T. testified that whatever statement she may have made about running away, it would have had nothing to do with her boyfriend. She was upset with her mother. She testified that she was in Illinois and Colorado with her boyfriend, but that her weeks-long trip was not running away. Considering that the notes and testimony of administrators Monti and Lamonica reflect that the runaway discussion with Respondent on October 28 was in the context of A.T. and her boyfriend in Illinois, I find that the two administrators made their own incorrect conclusion that the student must have told Respondent she was going to “run away.”

I have also not credited the testimony of A.T. that she told Respondent she was thinking about “running away.” The “running away” term was one chosen by counsel in his question to the student, and I find it unlikely that A.T. would have used such a direct phrase when talking with Respondent. A.T. plainly does not view herself as a young child

⁹ These are the types of added allegations that tend to constitute an admission by the District that its allegations are not sufficient to support termination. Of similar ilk is the District’s repeated references to Respondent’s directing A.T. to the *Salder.com* website, and related implication that Respondent was attempting to assist the student in cheating. I find the repeated Slader.com references to be a red herring and “added allegation” similar to those described above, and further, that Respondent’s directing the student to the website for guidance on how algebra problems can be solved was not an effort to cheat or encourage cheating. In this latter regard, the evidence establishes that the Slader.com website did not provide answer keys to any assignments, quizzes or tests in the Kingsway curriculum. A.T.’s raising such is further reason for my questioning the student’s credibility.

who would use such a term as opposed to an adolescent who has effectively had to function as her own parent and wants to someday get out of her challenging circumstances. The latter is consistent with the testimony of Respondent; testimony I credit. As for the other reporting-related allegations, in addition to their not being included in the Charges, I have found A.T.'s "probably"-laden testimony to be insufficient to support such allegations.

The District has failed to establish as true this portion of Charge 1.

3) Against District Policy, Respondent Used her Personal Cell Phone to Communicate with A.T.

The administrators at the October 28 meeting concluded that Respondent violated District Policy by contacting A.T. by cell phone and that the teacher violated the District's texting policy. The Charge cites CRESS Program Rules, and District Policies 3281.1 and 3283.

Policy 3281.1 "Staff Communication With Students" provides, in part, in regard to cell phones that; *"School staff shall not contact students' cell phones unless directed to do so by the parent/guardian or upon request given permission,"* and that personnel *"shall limit cell phone interaction...to contact that pertains to legitimate school business."* The portion of the Policy relating to "Computer Communications" provides in part; *"...personnel shall adhere to the following guidelines when sending or receiving messages via internet, external E-mail, texting, and social media...All messages shall pertain to legitimate school business."* Policy 3283 prohibits communication between a teaching staff member and a student via a personal cellular telephone, unless approved to do so by a principal or designee *"...if the need to communicate is directly related to the teaching staff member's professional responsibility for a specific purpose..."* The Policy

provides similar language relating to texting. The CRESS Homebound Services Manual provides under Required Documentation, among other things, “Phone/Text/Email Communication Log,” and in the Questions/Concerns section at 10. provides: “*When using a cell phone, please be professional in all interactions (e.g. eliminate “group texts” sent to multiple contacts).*”

Respondent testified that A.T.’s mother told her that she did not keep track of A.T.’s work schedule and that Respondent should contact A.T. directly to schedule sessions. When A.T. was asked on the witness stand if her mother directed Respondent to contact A.T. directly and gave the teacher A.T.’s cell phone number, A.T. responded “probably.” Similarly, A.T. testified that she likely told Respondent that she preferred being contacted by texts.

I am persuaded that the District has failed to meet its burden of establishing that Respondent was informed of the policies contained in the Homebound services employee manual. In this regard, the District was unable to present any acknowledgement of such receipt by Respondent. However, I do find that as a relatively long term teacher in the District, Respondent either knew or should have known of the District’s policies relating to cell phone communication with students.

Policy 3281.1 allows Respondent to contact a student on the student’s cell phone with the permission of a parent and for legitimate use. Policy 3283 permits Respondent to have cell phone communication with a student if the communication is directly related to the teacher’s professional responsibility for a specific purpose and is approved by a principal or designee. Here, the evidence establishes that Respondent was given

permission to have ongoing contact A.T. by the student's mother *for purposes of scheduling*.

I am persuaded that Respondent did not violate District policy by first contacting A.T. by cell phone for purposes of scheduling as was consistent with the permission given her by A.T.'s mother. However, notwithstanding the permission given by A.T.'s mother and the occasional email reference to texting A.T. that Respondent may have been communicated to Seibert and Cappolina, I find that Respondent violated the District's cell phone use policies by going beyond the scope of the permission given her by the mother of A.T., and by going beyond the narrow, permissible uses of such communication contained in the District's policies. Respondent either was aware or should have been aware of the District's general policy against cell phone communication with students, particularly communications that are frequent and/or go beyond the need to communicate with a student for specific purposes such as those outlined in District Policy 3283. Respondent used cell-phone and cell-phone-text communications with A.T. as primary tools of communication with the student for purposes of instruction, guidance and managing the student's school work. I find there is no reasonable basis in the record to conclude that the District knew that Respondent was primarily engaging with the student by cell phone and text while the student was out of the state for a long period during times when school was in session.

I find the District has met its burden of establishing the truth of its allegation that some of Respondent's conduct violated District communication policies, and that the teacher failed to meet reasonable professional expectations of the District by continuing to so engage with A.T. while the student was out of the state without direct and clear

communication with the District about ongoing and fundamental changes in circumstances relating to the instruction of A.T.

4)That Respondent received pay for services she was not entitled to receive as a result of fraud.

As found above, Respondent’s use of “HBI virtual” on verification forms did not communicate, nor was it intended to communicate, that Respondent engaged in in-home instructions of A.T. on the dates indicated. I am not persuaded that the District has established that Respondent engaged in fraud by billing for services to A.T. As discussed above, the District through Siebert and Kingsway through Cappolina, knew of and approved of Respondent’s strategy relating to A.T. That being, that the homebound instructor would organize, guide, monitor and encourage the student to complete algebra assignments and take quizzes and tests in Schoology, rather than engage in direct in-person instruction of the student in the subject. In such circumstances, I find that Respondent’s billing for time spent guiding and monitoring the student in a manner that, in fact, resulted in the student completing her work and successfully progressing through the Kingsway algebra curriculum does not support a finding that Respondent knew or believed her billing to be false, or that she intended to deceive the District or Kingsway that she exclusively engaged in in-home instruction of A.T.

The District has failed to establish as true this portion of Charge 1.

5)The District was Forced to Refund Money to Kingsway

The District failed to establish this allegation of its Charge. In fact, District witnesses established just the opposite; the District has not refunded payments it made for Respondent's services by Kingsway, either as a result of "force" or otherwise.

The District has failed to establish as true this portion of Charge 1.

Charge 2: Other Just Cause

The above described conduct amounts to neglect of duty, fraud, and theft by deception which constitutes other just cause warranting Tyson's permanent dismissal from employment.

Based upon relevant considerations discussed above, I find the record fails to support findings that Respondent engaged in conduct amounting to neglect of duty, fraud, and theft by deception sufficient to constitute other just cause to support the termination of Respondent.

Discharge is not an Appropriate Level of Discipline Under the Circumstances.

Having found merit to a portion of the allegations contained in the tenure Charges, I make the following conclusions based upon the *Fulcomer* and Just Cause standards:

1. Applying the *Fulcomer* Test

I find that Respondent has a significantly long teaching career; has a good overall teaching record; that the potential impact of termination on Respondent's teaching career would be substantial; and that the record is devoid of evidence establishing any intent on Respondent's part to punish anyone. As for the nature and gravity of the Respondent's

offenses relating to cell phone communication and failure to apprise the District of the long-distance aspect of Respondent's engagement with A.T., I find they are significantly mitigated by the facts herein found that Respondent's conduct was consistent with the "anything that works" nature of her assignment, and was engaged in in good faith with a sincere effort to aid a struggling student through disadvantages and challenges not entirely of her own making. I find there is no significant likelihood of harm or injury that Respondent's conduct may have on maintenance of discipline and the proper administration of the school system. Finally, I am persuaded that, considering the filing of Tenure charges and the discipline of Respondent ordered herein, it is unlikely that Respondent will repeat her cell phone related behavior.

Applying the *Fulcomer* considerations, I find that termination is unwarranted in this matter.

2. **Just Cause**

The TEACHNJ Act incorporates the just cause standard wherein it provides that a school district shall not dismiss or reduce the compensation of a tenured teachers except for "inefficiency, incapacity, or conduct unbecoming ...or other just cause," (emphasis added). An analysis of whether or not Respondent's discharge was for just cause under generally recognized standards requires consideration of all of the circumstances in determining whether the issuance of discipline was "fair." Some of the several factors often considered when applying the just cause standard include whether or not: (1) the rule or policy being enforced is reasonable; (2) there was prior notice to the employee of the rule and the consequences for its violation; (3) the disciplinary investigation was adequately and fairly conducted and the employee was afforded an appropriate level of

due process under the circumstances; (4) the employer was justified in concluding that the employee engaged in the conduct as charged; (5) the rule has been consistently and fairly enforced and (6) whether or not the discipline issued was appropriate given the relative gravity of the offense, the employee's disciplinary record and considerations of progressive discipline and due process.

In the instant matter, I find the District failed to show that the discipline of discharge was appropriate given the relative gravity of the offense found, Respondent's disciplinary record and considerations of progressive discipline and due process.

The Corrective Nature of Progressive Discipline

It is widely recognized that in all but the most egregious cases, discipline in the employment context is primarily intended to be corrective in nature; discipline is an effort by an employer to correct questionable conduct or poor performance by employees. Under the just cause standard, discipline is not a means to punish an employee or gain retribution for an employee's conduct. Only when efforts to correct have failed through reasonable efforts under the circumstances, is discipline justly used to terminate the employment relationship.

I find that Respondent's conduct was not of such an egregious character as to warrant immediate termination of the long tenured teacher. In her years of employment with the District, Respondent was never previously disciplined. Nor has Respondent been given the opportunity to correct her conduct relating to her cell phone use and failure to keep her supervisors fully informed of the circumstances relating to home-bound students.

Additionally, I find that to a significant degree, both the District through its program manager Seibert and Kingsway through its counselor Cappolina encouraged Respondent to think outside of the box when addressing the significant challenges of educating A.T. The nontraditional efforts of Respondent were successful. However, that being said, the District was entitled to have been kept apprised of the manner in which Respondent was engaging the student and particularly the cell-phone-based, and long-distance nature of Respondent's work. The decision to engage in such methods was the District's, not Respondent's.¹⁰

Appropriate Discipline

Having found that termination of Respondent is disproportionate to the conduct found, I nevertheless find that Respondent's conduct relating to her cell phone use and failure to keep her supervisors fully informed of the circumstances relating to A.T. warrants a comparative level of discipline, while giving her an opportunity to correct her conduct.

Considering the entire record in this matter, I will order that Respondent be promptly reinstated, that Respondent be made whole for losses in pay, benefits and seniority resulting from the filing of the Tenure Charges, including any suspension relating thereto, and that Respondent's termination be reduced to a warning relating to communication with students and reporting requirements.

¹⁰ I am also persuaded that in terms of consideration of mitigating factors, when the allegations of A.T. were first disclosed to the District, there was a degree of scapegoating that, as scapegoating tends to do, unfairly flowed exclusively to the level of least authority; that being Respondent.

Conclusion

The Tenure Charges are sustained in part and dismissed in part.

AWARD
I/M/O Tenure Charges of Alix Gillespie
Agency Docket Case No. 241-12/21

The subject tenure charges against Respondent are sustained in part and dismissed in part.

The District is ordered to:

1. Reduce Respondent's termination to a warning;
2. Promptly offer Respondent reinstatement to her former position;
3. Make Respondent whole for losses in pay, benefits and seniority resulting from her suspension/termination.

Dated: May 11, 2022



Timothy J Brown, Esquire
Arbitrator

I, Timothy J Brown, affirm that I have executed this document as my Award in Agency Docket Case No. 241-12/22 relating to tenure charges against Alix Gillespie on Wednesday, May 11, 2022.



Timothy J Brown