

**IN THE MATTER OF THE TENURE ARBITRATION  
BETWEEN**

**SCHOOL DISTRICT OF THE BOROUGH OF  
LAKEHURST, OCEAN COUNTY,**

**DOCKET NO. 177 7/22**

**PETITIONER,**

**AND**

**BEFORE JACQUELIN F. DRUCKER, ESQ.  
ARBITRATOR**

**REBECCA SCHROEDER,**

**RESPONDENT.**

**AWARD**

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**APPEARANCES BY COUNSEL:**

**FOR THE PETITIONER:           MICHAEL A. PATTANITE, JR., ESQ.<sup>1</sup>  
LENOX, SOCEY, FORMIDONI, GIORDANO, LANG,  
CARRIGG & CASEY, LLC**

**FOR THE RESPONDENT:       MICHAEL DAMM, ESQ.  
SELIKOFF & COHEN, P.A.**

**I. PROCEDURAL BACKGROUND**

The Board of Education of Lakehurst, New Jersey (Ocean County) (“Board” ) certified to the Commissioner of Education four tenure charges (“Charges”) seeking the revocation of tenure and termination of employment of Rebecca Schroeder (“Respondent” or “Ms. Schroeder”), a tenured Teacher employed by the School District of the Borough of Lakehurst, Ocean County (“District,” “Employer,” or “Management”). Each charge alleged “unbecoming conduct” and pertained to events alleged to have occurred on April 7, 2022. In lieu of an Answer, Respondent

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<sup>1</sup> Mr. Pattanite and his law firm joined as substitute counsel effective January 14, 2023.

timely submitted a detailed Motion to Dismiss (“Motion”) seeking dismissal of all charges. Thereafter, by letter dated July 22, 2022, the Commissioner of Education, through the Office of Controversies and Disputes, referred the charges to this Arbitrator pursuant to N.J.S.A. 18A:6-16. In a conference with the Arbitrator, the parties agreed that full briefing and consideration of the Motion would proceed before further scheduling was undertaken. In accordance with the schedule agreed to by the parties, the parties provided detailed submissions regarding the Motion. After having given full, fair, and careful consideration to all arguments presented by the parties, the charges and all supporting documents provided by the District, and all authorities and citations offered by the parties, the Arbitrator issued an Order Regarding Motion to Dismiss (“Order”), granting the Motion as to Charge Four and holding the hearing would proceed as to Charges One, Two, and Three. That Order, issued on September 7, 2022, is attached hereto and incorporated herein by reference. Respondent thereafter submitted her full Answer in response to the remaining charges.

By agreement of the parties, the hearing of the remaining three charges was commenced on January 19, 2023, at the Lakehurst Community Center, 207 Center Street, Lakehurst, New Jersey. At hearing, each party was given a full and fair opportunity to present evidence through documents and testimony of witnesses. All witnesses, except Ms. Schroeder and District Superintendent Loren Fuhring, the Board’s party representative, were sequestered. All testimony was provided under oath and was subject to direct, cross, redirect, and re-cross examination. At the commencement of the hearing, it was agreed that a court reporter would prepare a transcript, which, after the hearing, was provided to both parties and the Arbitrator.<sup>2</sup> At the conclusion of the District’s case in chief, the Respondent moved for dismissal of all charges, arguing that the District had not met its burden of proof. The Arbitrator took the motion under advisement and now concludes that, based upon the findings herein, it need not be addressed. When the presentation of evidence was concluded, the parties agreed to a schedule for post-hearing briefs

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<sup>2</sup> Neither party prepared an errata sheet regarding same, nor did the Arbitrator. The Arbitrator notes, however, that, on page 8 of the transcript, the District’s opening statement is attributed to “The Arbitrator.” This is incorrect. It of course was presented by counsel to the District. In addition, the transcript states that each witness was sworn “by the Certified Court Reporter.” That is incorrect; each witness was placed under oath by the Arbitrator, who administered the oath herself, asking each witness to swear or affirm regarding the truth of the witness’s forthcoming testimony.

and arguments. Following agreed extensions of time, same were timely submitted to the Arbitrator, and exchange copies were forwarded by the Arbitrator's Office Administrator, whereupon the hearing was closed on March 23, 2023. In light of the Motion process and various scheduling issues, the Arbitrator, with the agreement of the parties, secured approval from the Office of Controversies and Disputes for extensions of the statutory deadlines for this proceeding.

## **II. THE CHARGES**

In seeking termination of Respondent's employment and revocation of her tenure, the District asserted four Charges, each of which alleges that Respondent engaged in unbecoming conduct. Charges One, Two, and Three relate to the alleged events of April 7, 2022. Charge Four related to a discussion that Superintendent of the Lakehurst School District, Loren Fuhring, held with Respondent the following day, April 8, 2022. That Charge alleged that Grievant had "knowingly, intentionally, and willfully made a false statement" to the District Superintendent. For the reasons stated in the Order, attached hereto and incorporated herein by reference, Respondent's Motion to Dismiss was granted with regard to Charge Four, as the charge itself was based not on a denial but solely upon Respondent's statement that she lacked recollection. The Arbitrator notes that, while Charge Four was dismissed, the full evidence adduced at hearing, through testimony presented under oath, confirmed further that there was no falsehood conveyed by Respondent during the investigation.

Charges One, Two, and Three allege that on or about April 7, 2022, Respondent, a tenured Pre-School Teacher, "knowingly, intentionally, and willfully" and during school hours and "in the presence of staff members and students": "lay on the ground in her classroom and went to sleep, at approximately 9:35 a.m." (Charge One); "did sleep in the closet of her classroom during lunch period" (Charge Two); and "did delegate instructional responsibilities to [LM], a paraprofessional in her classroom, without any supervision, by asking [LM] to perform morning meeting, or 'circle time' by herself while Ms. Schroeder did . . . sleep in her classroom by laying on the floor . . . ." (Charge Three).

### III. FINDINGS OF FACT

Multiple elements of the relevant facts are not in dispute. Ms. Schroeder is employed by the District as a tenured Pre-School Teacher and has served in that capacity for many years. At all relevant times, she was assigned to a class of approximately 12 students, aged three to five. During the 2021-22 school year, also assigned to Ms. Schroeder's class was LM, a Paraprofessional who then was in her first year of employment with the District.

The Charges relate to events that occurred on April 7, 2022. The preceding week, Ms. Schroeder had spent eight hours at a local Emergency Department being treated for severe gastroenteritis, which resulted in her being off duty on the Thursday and Friday of that week. Ms. Schroeder followed the proper administrative steps to report off duty because of illness on those two days, letting the attendance officer know that she was ill and that she was seeking emergency treatment. There is no issue in the instant charges regarding the propriety of her absences on those days nor is there any valid challenge to the credibility of her testimony recounting her illness and medical care.

Ms. Schroeder routinely arrives for class well before the required time of 7:55 a.m. Thursday, April 7, was no different, and she reported between 7:15 and 7:20 a.m. and prepared for the class. She was not, she testified, feeling unwell at that time. On Thursdays, the children's mornings began with a physical activity class in the gymnasium. Ms. Schroeder and LM thus walked together to the gym/cafeteria area to be there to pick up the students when their session in the gymnasium concluded. As they were walking, Ms. Schroeder began to feel nauseated. She and LM concur that she told LM that her stomach hurt and that she was feeling sick, as she had felt the prior week when she had gone to the hospital. Ms. Schroeder visited the bathroom but continued to feel ill. When LM suggested that perhaps she needed to go home, Ms. Schroeder said "Let's see, I am just not feeling right." Ms. Schroeder usually engages with the children during their physical activity class but, on this day, she and LM instead sat in the bleachers and

observed the class from there. While there, Ms. Schroeder told LM that she was not feeling better and felt that she needed to go home. She indicated that she would call the nurse when they returned to the classroom.

In the classroom, Ms. Schroeder had the children sit on the carpet for their usual “circle time,” to take attendance, read stories, and get ready for the day. “Circle time” is conducted with the full class together, before breaking into “centers,” in various parts of the room, when the students focus on different activities such as technology, blocks, dramatic play, etc. After having the children assemble on the floor, Ms. Schroeder asked LM to lead the circle time while she called the nurse, but Ms. Schroeder remained present, at her desk, right beside the students in the circle. LM took a seat in a rocking chair as Ms. Schroeder sat at the desk just a few feet from LM and the children. Ms. Schroeder telephoned the RN. The RN recalls that, in their brief conversation, Ms. Schroeder reported that she was nauseated and had diarrhea. They agreed that she should go home, and Ms. Schroeder asked the RN to call the office to let them know. The RN relayed this information to Cecilia Ward, the Coordinator of Substitutes, telling Ms. Ward that Ms. Schroeder “has to go home.” Ms. Ward told the RN that she did not know what she was going to do, as she did not think that she had a substitute teacher available.

After speaking with the RN, Ms. Schroeder remained at her desk, observing the circle time, waiting to hear back from administration as to whether she could be relieved. LM told Management and initially testified that, as to this particular point in time, she had to do circle time “alone” and had never done so before, yet the record establishes and LM at no time disputed that, while she was reading stories to the class, she, the class, and the activities were under the observation of Ms. Schroeder, who was seated at the desk, mere feet away. Circle time is considered instructional activity, and, on this day, it was conducted pursuant to the plans and readings developed by Ms. Schroeder and under Ms. Schroeder’s direct and immediate supervision and observation.

During circle time, Coordinator Ward entered the classroom. She had been unable to locate a substitute teacher and, of the Paraprofessionals who could step in, one was out on leave and the

other was already covering an assignment. Ms. Ward testified that she apologized to Ms. Schroeder and told her that there were no teachers or paraprofessionals available to cover the class for her for the rest of the day. Ms. Ward, who has known Ms. Schroeder for many years, confirmed that Ms. Schroeder appeared to be “a little under the weather” and noted that she had been resting her head on her hand while seated at the desk by the circle session. Ms. Ward asked her if she was going to make it, and Ms. Schroeder responded that she would “get through the day.” All agree that it was essential for this Pre-School class to have both a Teacher or appropriate substitute plus a Paraprofessional present, given the number of students, their age levels, and pedagogical and safety requirements. Ms. Schroeder was aware of this requirement and also aware of the difficulty the District often had finding appropriate substitutes. She thus decided, she testified, that she could “tough it out.”

In total, circle time lasted approximately 20 minutes. Ms. Schroeder was at her desk, observing and monitoring the circle time, with the exception of one moment, which Ms. Schroeder described as when she felt the worst of the day, when she briefly went into the bathroom in the classroom and then returned to her desk. When Ms. Schroeder noted that LM was completing a story, Ms. Schroeder began to set up for the center activities, fetching the small decorative pillows that the children use during center time and for naps. It is undisputed that, as COVID and various viruses, including a gastrointestinal bug then prevalent within the school population, remained of concern, the classroom hygiene routine was for Ms. Schroeder or LM to spray the pillows each morning with disinfectant before placing them on the furniture for use by the children. LM in testimony initially suggested that Ms. Schroeder did this as part of a plan to prepare a place on the floor to sleep, but LM acknowledged on cross-examination that preparation of the pillows was a daily hygiene routine in the classroom.

After Ms. Schroeder placed the pillows, she returned to her desk, and circle time was completed. Ms. Schroeder and LM then directed the children into their groups for center activities. During center time, Ms. Schroeder and LM typically would move throughout the classroom or position themselves so that they could observe the various groups. LM took a seat at a table near one group, and Ms. Schroeder sat on the floor, which is common for Pre-School Teachers, by the

sofa, in the center of the room, near another group. Although she still felt unwell, Ms. Schroeder while seated was observing the children in one group who were working with puzzles, and her undisputed testimony establishes that she was interacting with them verbally. As Ms. Schroeder was in the center of the room, she also could observe the children in another group, on the other side of her, while LM, seated at a table, was in a position to monitor the groups closest to her. LM reported to the District and initially testified that, during this time, she observed Ms. Schroeder “laying [sic] on the floor,” but LM modified that account as her sworn testimony progressed, ultimately agreeing that Ms. Schroeder was, as Ms. Schroeder has consistently maintained, seated upright and not lying on the floor. As addressed below, LM’s account was the only testimony (as contrasted with a witness’s written account, which the witness contradicted in testimony) supporting the aspect of Charges One and Three alleging that Ms. Schroeder willfully “lay on the ground,” in the classroom, and LM’s account cannot be and is not credited.<sup>3</sup> Having followed, carefully observed, and studied all testimony and considered all evidence, the Arbitrator credits Ms. Schroeder’s account of events that morning, including that Ms. Schroeder was seated on the floor, observing the children in their center activities.

Another Paraprofessional testified that, during center activities, at approximately 9:45 a.m., she “popped [her] head into” Ms. Schroeder’s classroom for less than a minute. This

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<sup>3</sup> LM’s testimony in this and other regards lacks credibility for a number of reasons. Her accounts, on the whole, were conclusory and lacking in the supporting detail that would be expected of an eyewitness and participant in events. When she did attempt to offer details, these points, as well as central assertions and sequences of events, were inconsistent, not only when contrasted with her written accounts but also within her sworn testimony. Further, LM’s written statements had been “updated” pursuant to directives from the District and contain the content of a conversation to which, under oath, LM acknowledged she was not privy. LM’s testimony on cross-examination tended to be evasive and argumentative, and matters that she at points had described as certainties were acknowledged in testimony to be assumptions and overstatements. In that regard, the record shows substantial exaggeration regarding her role that morning and inconsistencies in her stated motivations for and timing of her actions in conveying information to Management. Moreover, LM has an interest in the outcome of these proceedings, as her personal friend now is holding the teaching position to which Ms. Schroeder would return if the charges herein are not sustained. Accordingly, and having carefully assessed all aspects of the testimony of all witnesses, having observed same attentively throughout their sworn testimony on direct, cross, redirect, and follow-up questioning, and having thoroughly considered all other evidence of record, the Arbitrator finds that there are significant impediments to according weight and credibility to the specifics of LM’s accounts.

Paraprofessional, who holds a substitute teaching certificate and has been assigned to teach Ms. Schroeder's class pending the outcome of this proceeding, was working in another class that day. She testified that, during the minute in which she popped her head into the classroom, center activities were underway, and she saw Ms. Schroeder on the floor in the library area, across the classroom, with children in the center area "right next to her." This is consistent with Ms. Schroeder's account of the activities that were underway in her area. While this Paraprofessional testified initially (and wrote in a statement) that she saw Ms. Schroeder lying on the floor "sound asleep," in her testimony the Paraprofessional acknowledged that she could see only Ms. Schroeder's legs, "from her knee down," and could not see Ms. Schroeder's head, face, upper torso, or abdominal area, as there was a bookcase blocking her view. She also could not recall the position of Ms. Schroeder's feet or what type of shoes she was wearing. The Paraprofessional also observed, she testified, that Ms. Schroeder "was moving." The Paraprofessional asked LM if she could help out, and LM reportedly said that she could handle things. In her testimony, the Paraprofessional explained that she had reported and written that Ms. Schroeder had been "sound asleep" only because LM had told her that Ms. Schroeder was sleeping.

Also during the center time activities, while Ms. Schroeder was seated on the floor and LM was seated at a table, Carmen Quaglia, Pre-School Supervisor, entered the classroom, Ms. Schroeder greeted her verbally, and Ms. Quaglia noted that Ms. Schroeder looked tired and disheveled. She asked Ms. Schroeder if she was okay, and Ms. Schroeder responded that she was not feeling well. When Ms. Quaglia said that she should go home, Ms. Schroeder explained that she had spoken to the RN and to Ms. Wade and that there was no one who could cover the class. Ms. Quaglia recalls that Ms. Schroeder told her that she thought she would be okay and could make it through the day. Ms. Schroeder got up from the floor and, as even LM testified, "continued" her teaching activities until it became time to prepare the students for lunch. Ms. Schroeder then



oversaw the students as they washed their hands, retrieved their lunch boxes, and sat and ate their lunches. LM testified that, during this time, Ms. Schroeder appeared to be feeling better and that “. . . she seemed great. She seemed fine.”

The District has alleged that during some portion of the morning, from the time that Ms. Schroeder contacted the RN until some point at or prior to the students’ lunch, LM was required for approximately 45 minutes to teach the class and manage the entire class alone “without teacher support” from Ms. Schroeder. As indicated above, however, the evidence of record does not establish that this was the case. In fact, during this time, both the Coordinator and the Pre-School Supervisor were in the classroom and, while both agreed that Ms. Schroeder stated that she was not well but that she could get through the day, neither observed anything to suggest or to raise concern that LM was being left alone to teach with no guidance or supervision from Ms. Schroeder. Other than conclusory testimony by LM, with no details as to any particular actions or any absence of direction, nothing in the record indicates that LM was left on her own to handle any tasks with the students. Ms. Schroeder was present throughout the morning and, while she was grappling with feeling unwell but feeling better toward the end of center activities, there is no credible evidence that she at any time failed to oversee the classroom and the work of LM or that she shirked her duties as a Teacher or delegated instructional responsibilities to LM without providing proper supervision.

After the students had lunch, which Ms. Schroeder supervised, it was time for Ms. Schroeder’s scheduled lunch break at 11:30 a.m. Ms. Schroeder told LM that she was going to take a nap in the “closet,” which all agree is a storage room, housing toys and other items that are not in daily use. It is located at the back of the classroom, behind the kitchen area, and has sufficient space to accommodate a desk and to store a number of extra cots. Rooms of this type are used from time to time by staff when a quiet, closed space is needed. The parties agree that, during lunch breaks, Teachers are free to engage in personal activities of their choice. They may leave the school, as long as they return by the end of the break, may tend to personal business, and are free to nap, although the District has suggested that napping in the storage room was prohibited. Nothing in any policy, however, indicates that such a prohibition is in place or should be known.

Testimony in this regard veered off into why it is wrong for personnel to sleep in the “classroom” and did not address the storage room, behind the kitchen, with the doors closed, away from the children, during a private lunch period. The District has suggested that Ms. Schroeder could have asked the RN to sleep in her office. The RN indicated that this could be possible and that it occurs roughly once per year, but Ms. Schroeder noted that, while there are two beds in the RN’s office, the space is bright and has frequent access by students and staff. Similarly, when asked about the teachers’ lounge, Ms. Schroeder noted that it is not quiet or private and there was no sofa at that time. Finally, the District suggested that Ms. Schroeder could have taken a nap in her car, which Ms. Schroeder acknowledged that she could have. In the end, however, there has been no showing that use of the storage room in this way during her lunch break was prohibited, posed an impropriety, or placed the welfare of the children in jeopardy.<sup>4</sup>

Ms. Schroeder entered the storage room and set her telephone alarm so she would wake up before the end of her lunch period. She napped on one of the cots, and, when she awoke, Ms. Schroeder returned to the classroom at approximately 12:00 or 12:05 p.m. LM, however, told Ms. Schroeder that she was worried about her and was going to the office to tell them that she should be permitted to leave. Ms. Schroeder responded that it was not necessary, that she was going to be fine, and that she did not want to bother them because she knew that there were no substitutes available. LM nonetheless went to the office, which is odd, as Ms. Schroeder had said she was better and, from the end of center time at least one hour before, LM had observed that Ms. Schroeder was, as LM said, “fine” and “great.” LM reported first to Coordinator Ward that Ms. Schroeder was not well and took a nap in storage room. LM then spoke with the District Superintendent, who recalls that LM told her that Ms. Schroeder had taken a nap “in the middle of the classroom,” which is different from what LM told Ms. Ward.

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<sup>4</sup> The District also has argued that, during her lunch break, Ms. Schroeder could have summoned medical assistance, dialed 911, or contacted her personal physician. This is a notable over-dramatization of the circumstances with which Ms. Schroeder was dealing. By this point, she had committed to and was working through the day, was already feeling better, had been observed by LM as being “fine,” and had expected that a brief nap during her lunch break would be helpful. The situation was not and has never been described by Ms. Schroeder as a medical emergency, as suggested by the District.

While Ms. Schroeder was monitoring the students during their nap time, Supervisor Quaglia returned to the classroom. She went when she knew that LM would be on her lunch break and that the children would still be in nap time. She and Ms. Schroeder spoke, and Ms. Schroeder told her about having been ill the week before but that she had concluded that her condition that morning ultimately had not been related. Ms. Schroeder and Ms. Quaglia discussed the fact that she was feeling better and that, with the absence of any available coverage for the class, would be able to stay for the little time that remained in the day. The RN also stopped in during this time to check on Ms. Schroeder, and Ms. Schroeder reported to the RN that she was feeling better and was able to complete the day. Ms. Schroeder did so, and, after the students had left for the day, she stayed for a 2:00 p.m. teachers' meeting with Ms. Quaglia. Ms. Quaglia recalls that Ms. Schroeder did then seem to be feeling better, that she contributed to the meeting, and that she had the paperwork that Ms. Quaglia had asked the Teachers to prepare for the meeting.

The following day, based on what LM had reported, the District Superintendent oversaw the initiation of an investigation. Ms. Schroeder reported to work that day, and she was summoned to meet with the District Superintendent, who told Ms. Schroeder repeatedly that she had been seen sleeping. Ms. Schroeder testified that she began to doubt herself, wondering if she might have had a medical episode that did not recall. She noted that she has a heart condition, of which LM is aware, and Ms. Schroeder thus wondered why, if LM thought she had passed out, LM did not summon help using the emergency button or other communication options available in the classroom. Written accounts were requested from those noted above, although LM later revised her written account at the request of the District. Ms. Schroeder was notified that she was being sent for a fitness-for-duty examination. She complied and was found fully fit for duty.

#### IV. ANALYSIS

Respondent is a tenured Teacher, and the District seeks, under N.J.S.A. §18A:6-10 and N.J.A.C. §6A:3-5.1, to revoke her tenure and dismiss her from employment on the basis of charges alleging that, on April 7, 2022, she engaged in unbecoming conduct. To this end, the District bears the burden of establishing, by a preponderance of the credible evidence, that Respondent engaged in the acts alleged in the charges and, if so, that said actions constituted unbecoming conduct under New Jersey law. If that is established by the credible evidence of record, the question then is whether dismissal is the appropriate level of discipline. *In re Fulcomer*, 93 N.J. Super. 404 (App. Div. 1967). Having carefully reviewed and considered all evidence of record and all arguments and authority presented, the Arbitrator determines that resolution of Charges One and Three turns solely on the first inquiry, which is whether the District has met its burden of establishing that Respondent engaged in the conduct alleged in those Charges. The proofs, consisting of extensive testimony and documents and leading to the factual findings noted above, fall far short of establishing that events occurred as alleged in Charges One and Three. As to Charge Two, the Arbitrator finds that the proofs fall far short of establishing that Respondent's actions as alleged therein, in view of the detailed facts of record, constituted unbecoming conduct.

The allegations set forth in Charges One and Three are the result of initial accounts and reports that have been shown to lack credibility but to have flourished through repetition. Managerial concerns would have been warranted if the allegations were true, yet the evidence of record establishes that they are not. Simply stated and what the overwhelming weight of the credible evidence shows is that Respondent was physically unwell but not unable to function in her capacity as a Teacher and that, in order to properly attend to the children, she enlisted Paraprofessional LM's assistance with the class but at no time left LM alone or had LM interact with the children without Respondent's supervision, observation, and guidance as the Teacher in charge of the class. The record further shows that, during a portion of center activity time, Respondent was seated on the floor, interacting with and observing student groups, while LM was seated at a table with her attention directed to different groups of students, as is the structure

of center time. The uncorroborated allegation by LM that Respondent lay on the floor cannot be credited, nor is credit given to LM's allegation that Respondent fell asleep at any point while seated on the floor.

The District has portrayed the circumstances as being dramatic in nature, describing Respondent as having been so ill that she could not hold her head up, could not keep her eyes open, and could not stay awake and arguing that she nonetheless offered no medical evidence to support such a condition of emergent illness. Yet nothing in the record establishes that these circumstances existed. Respondent has consistently, from the morning of April 7 to present, described a situation involving nausea and diarrhea that made her feel unwell but that did not render her unable to function, given that no substitute was available, and that had largely subsided by late morning. All who testified regarding interactions with Respondent, even LM, offered descriptions that were consistent with those facts.

The District also suggests that there is a set procedure for how Teachers are to deal with instances in which they become unwell after having reported to work or while teaching a class, but no such policy or directive has been shown to exist. The RN logically is to be consulted, which was the case here, but beyond that, there is no specified course of conduct. Indeed, the absence of such a policy is indicative of the broad range of circumstances that may exist when a teacher begins to feel ill in the course of the workday. Try as the District might to heighten the drama, this was not a case of a dire emergency or a medical collapse, and Respondent at no time portrayed it as such. This was a case in which a Teacher, knowing that Management had no ready way to cover her needed presence in the classroom, remained on duty, pushing through and hoping that the symptoms she was experiencing would pass. She continued to function, albeit not in top form, providing the required supervision of the classroom, students, and the Paraprofessional. As Respondent told others that day and testified at hearing, she gradually felt better over the course of two hours and anticipated that, if she could take a nap during her lunch break, she would be back in full form. And, in fact, the evidence establishes that this is what happened.

As is clear from these findings, Charge Two, regarding the nap that Respondent acknowledges she took during her lunch break, in the storage room, behind the kitchen area, away from the students, with the door closed, and with her alarm set so that she would return to the classroom on time, has not been shown to constitute any form of misconduct or unbecoming conduct. The District is free to prohibit the use of such storage spaces for purposes such as lunch-break naps or class preparation, but no such prohibition was in place at the relevant time. Moreover, the District has not shown that Respondent's action in this regard constituted unbecoming conduct: there has been no showing that Respondent's action during her lunch break created any risk of harm, raised any concern for the welfare of students or personnel, constituted inappropriate conduct by a teaching professional, compromised morale or efficiency, or formed any basis upon which the respect of the public or the interests of the District were impaired. *Karins v. City of Atlantic City*, 157 N.J. 532 (1988); *Bound Brook Board of Education v. Ciripompa*, 228 N.J. 4 (2017); *In re Emmons*, 63 N.J. Super. 136 (App. Div. 160). Accordingly, Charge Two fails as the action at issue has not been shown to constitute unbecoming conduct.

Charge One fails for a lack of proof. It asserts that Respondent "willfully lay on the ground in her classroom and went to sleep," which, for the reasons stated above, has not been shown by a preponderance or any measure of the credible evidence. Similarly, Charge Three fails for lack of proof. It alleges that Respondent delegated instructional responsibilities to the Paraprofessional "without any supervision" by asking the Paraprofessional to conduct circle time by herself while Respondent allegedly slept. Again, the evidence as to the allegation of sleeping is fundamentally flawed and without credibility, and that element of the Charge thus has not been established. Moreover, while Respondent did ask the Paraprofessional to lead circle time while Respondent was feeling unwell and attempted to arrange to leave, circle time was conducted in accordance with the plans Respondent had developed, with Respondent mere feet away, under Respondent's observation and supervision, and with Respondent's full awareness, per her specific and credible testimony, of what task was being performed by the Paraprofessional at what time. For the reasons addressed above, the record does not support, by any measure of proof, a finding that, as

alleged in Charge Three, Respondent was asleep at any time or that Respondent at any time told the Paraprofessional to conduct or had the Paraprofessional conduct circle time “by herself,” without Respondent’s presence and supervision.

In the absence proof, by a preponderance of the credible evidence or by even lesser standards, that the alleged actions and conduct occurred, all Charges against the Respondent are hereby dismissed. The District is ordered to restore Respondent to her position as Pre-School Teacher and to make her whole for any compensation, benefits, and seniority lost as a result of her suspension pending resolution of these Charges.

Dated: May 1, 2023

A handwritten signature in blue ink, reading "Jacquelin F. Drucker". The signature is written in a cursive style with a large, looping initial "J".

Jacquelin F. Drucker, Esq.

Appendix A – Order regarding Motion to Dismiss

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**REBECCA SCHROEDER,**

**RESPONDENT.**

**ORDER RE: MOTION TO DISMISS**

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**APPEARANCES BY COUNSEL:**

**FOR THE RESPONDENT/  
MOVING PARTY:**

**MICHAEL DAMM, ESQ.  
SELIKOFF & COHEN, P.A.**

**FOR THE DISTRICT:**

**BARRY A. STEIBER, ESQ.  
CITTA, HOLZAPFEL & ZABARSKY**

**I. PROCEDURAL BACKGROUND**

The Board of Education of Lakehurst, New Jersey (Ocean County) (“Board” ) certified to the Commissioner of Education four tenure charges (“Tenure Charges”) seeking the termination of employment of Rebecca Schroeder (“Respondent” or “Ms. Schroeder” or “Movant”), a tenured Teacher employed by the School District of the Borough of Lakehurst, Ocean County (“District,” “Employer,” “Lakehurst”). Each charge alleged Unbecoming Conduct and related to events having occurred on April 7, 2022. In lieu of an Answer, Respondent on July 15, 2022, timely submitted a detailed Motion to Dismiss (“Motion”) seeking dismissal of all charges. Thereafter, by letter dated July 22, 2022, the Commissioner of Education, through the Office of Controversies and Disputes, referred the charges to this Arbitrator pursuant to N.J.S.A. 18A:6-



16. The Arbitrator conducted a conference call with counsel on August 9, 2022, at which time the parties agreed that full briefing and consideration of the Motion would proceed before further scheduling was undertaken. In light of this process and with the agreement of the parties, the Arbitrator secured approval from the Office of Controversies and Disputes for an extension of the statutory deadline for completion of this proceeding.

In accordance with the schedule agreed to by the parties, the District on August 19, 2022, submitted its detailed response to the Motion. Respondent submitted her reply brief on August 24, 2022. In reaching the conclusions and decisions herein regarding the Motion, the Arbitrator has given full, fair, and careful consideration to all arguments presented by the parties, the charges and all supporting documents provided by the District, and all authorities and citations offered by the parties.

## **II. THE CHARGES**

At issue in this case are four Charges, each of which alleges that Respondent engaged in Unbecoming Conduct. Charges One, Two, and Three relate to the alleged events of April 7, 2022. Charge Four relates to the discussion the District Superintendent conducted with Respondent the following day, April 8. Specifically, Charge Four alleges as follows:

**UNBECOMING CONDUCT:** That on or about April 8, 2022, Rebecca Schroeder, a tenured Pre-School teacher with the Lakehurst School District, did knowingly, intentionally, and willfully make a false statement to Loren Fuhring, Superintendent of the Lakehurst School District, when questioned about the incident involving Lisa Monahan occurring on or about April 7, 2022, by denying that she fell asleep in her classroom.

### III. RULING ON THE MOTION TO DISMISS

In considering the Respondent's Motion to Dismiss, all facts alleged in the Charges are accepted as true. In addition, accompanying the Charges is the Superintendent's affidavit regarding the Charges. That affidavit includes the Superintendent's account of the communication cited in Charge Four, as does an affidavit supplied by the District with its opposition to the Motion. These documents and additional evidence included with the Charges and the opposition to the Motion have been cited by the District in support of the single assertion set forth in Charge Four, which is that Respondent "knowingly, intentionally, and willfully make a false statement" to the Superintendent "by denying that she fell asleep in her classroom."

Although all facts as alleged in Charge Four are accepted as true as are all references in the evidence supplied by the District in support of the Charges and the Opposition to the Motion, taken together, they establish only that Respondent said, which she does not deny, that she did not remember or recall having fallen asleep. Specifically, in the Superintendent's affidavit dated May 10, 2022, which accompanies the Charges, the Superintendent stated as follows:

5. The next day, Friday April 8, 2022, I conducted an interview of Ms. Schroeder in my office. Present for the interview was the Lakehurst Teachers Association President, Cherie Menchini. When questioned, Ms. Schroeder denied falling asleep in her classroom during circle time. She told me that "I don't remember that". Ms. Schroeder did admit that she slept in the closet of her classroom during her regular 42-minute lunch period. Following the initial interview, Ms. Schroeder continued to teach her class.

In another affidavit of the Superintendent, dated August 18, 2022, and apparently prepared specifically for use in the District's opposition to the instant Motion, the Superintendent reiterated the same assertion as quoted above.

Further, as noted above, the other evidence submitted by the District in support of the Charges refers only to statements by Respondent in which she cites a lack of recollection. No evidence reflects or attributes to Respondent a denial.

The statement “I don’t remember that” is well established in law and logic as neither an affirmation nor a denial as to the substance of the question posed. Whether the lack of recall itself is credible is a different factual issue, but the statement attributed to Respondent in Charge Four does not, under any interpretation, constitute a denial. Thus, accepting as true all of the allegations set forth in Charge Four, in the supporting affidavit, in the affidavit supplied with the District’s Opposition to the Motion, and in all other evidence presented by the District in support of the Charges, no cause of action can be shown for Unbecoming Conduct based on the allegation that Respondent made a false statement by “denying that she fell asleep in her classroom.” Accordingly, the Motion is granted as to Charge Four, which hereby is dismissed.

With regard to the remaining Charges, the Motion is denied in that the Charges are not dismissed. This does not, however, preclude Respondent from advancing at hearing the fact-based and/or procedural arguments posed in this Motion as to the remaining Charges. As required by statute, a hearing will be held to determine if the remaining three Charges are supported by the preponderance of the evidence. The Office of Controversies and Disputes has granted an extension until December 6, 2022, for the hearing of this matter. The Arbitrator’s office will contact counsel to arrange for a prehearing conference at which time scheduling of the hearing and any remaining pre-hearing steps will be addressed.

Dated: September 7, 2022



Jacquelin F. Drucker, Esq.