

NEW JERSEY DEPARTMENT OF EDUCATION

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In the Matter of The Tenure

Charges Proffered by X

WESTWOOD REGIONAL SCHOOL DISTRICT

X Agency Docket No.
67-3/24

"Petitioner" X

-against-

X

PAUL LEVESQUE

X

"Respondent" X

X

- - - - - X

APPEARANCES

FOR PETITIONER

FOGARTY & HARA, Esqs.

By: Vittorio S. LaPira, Esq.

FOR RESPONDENT

CARUSO SMITH PICINI, PC

By: Nicholas Poberezhsky, Esq.

BEFORE: Earl R. Pfeffer, Arbitrator

INTRODUCTION

In Tenure Charges sworn on February 16, 2024 ("Charges"), Jill Mortimer, Ed.D., Superintendent of the Westwood Regional School District Board of Education ("Petitioner," "School District" or "District"), made allegations against Paul Levesque ("Respondent" or "Levesque") of conduct unbecoming and other just cause warranting Respondent's dismissal under N.J.S.A. 18A:6-10 from his position as a tenured Teacher in the School District. Also on February 16, 2024, Dr. Mortimer certified a Written Statement of Evidence in Support of the Tenure Charges, and both the Charges and the Written Statement were served that same day upon Respondent along with Notice of his right to submit a written response.¹

¹The Tenure Charges consist of one hundred twenty-three (123) paragraphs organized under three (3) separate Charges. Charge No. 1, §§1-72, recites multiple allegations of conduct unbecoming, specifically improper touches, rubs, stares and comments alleged by several female 6th graders who were students in Social Studies classes taught by Respondent in the Fall semester of the 2022-2023 School Year. The allegations lack specification as to date, but the hearing record indicates the School Year began on or about September 7, 2022, and Mr. Levesque was placed on administrative leave on October 14, 2022. Charge No. 1 also asserts, in connection with the alleged actions and comments described therein, violations of New Jersey law and regulation, and of School District policies, prohibiting Harassment, Intimidation and Bullying ("HIB"). Charge No. 2, in §§73-111 of the Charges, asserts various improper touches, comments and "looks" by Respondent between May 2017 and December 2018, some of which were referenced in a counseling memo to Levesque on June 27, 2017 (Board Exh. 9) and others in a Letter of Reprimand dated August 28, 2018 (Board Exh. 16) and still others which were deemed by the District's Human Resources Director, Shelley LaForgia, to be based on "school rumors about

Thereafter, on March 11, 2024, at a meeting of the School District's Board of Education, the Board considered the Tenure Charges, the Written Statement of Evidence and any response it received from Respondent's counsel, and upon same it determined there exists probable cause to credit the evidence in support of the Tenure Charges, and that the Charges, if credited, are sufficient to warrant Respondent's dismissal or reduction in salary. The Certificate of Determination and the Board's Resolution certifying the Tenure Charges and directing same be sent to the Commissioner of Education for appropriate action were served on Respondent on March 11, 2024, and mailed the following day, March 12, 2024, to the Acting Commissioner of Education. The Acting Commissioner, following receipt of Respondent's Answer to Tenure Charges on March 26, 2024, and his review of the parties' submissions, determined the Tenure Charges, if true, are sufficient to warrant dismissal or salary reduction of Respondent, subject to final determination by an arbitrator. On March 27, 2024, the Tenure Charges were referred to me for a hearing and decision.

Mr. Levesque's behavior" and "preconceived concern." Id. At §105. Charge No. 3, set forth in §§112-123 of the Tenure Charges, is based on and incorporates the factual allegations asserted in §§1-111, and states that Respondent's "improper, persistent and calculated touching of sixth-grade students [is] conduct unbecoming a teaching staff member . . . which constitutes HIB offenses and is in direct violation of N.J.A.C. 6A:9-3.3(a)(11) as well as" Board Policy 3211 and Board Policies and Regulations 3280, 3281, 5512 and 5751.

Respondent on April 16, 2024, submitted a Motion for Partial Summary Decision as to Charge No. 2 of the Tenure Charges. Respondent asserted that the 2017 and 2018 incidents which are the subject matter of Charge No. 2 were sufficiently minor and insufficiently credible that the School District decided against initiating contemporaneous disciplinary proceedings against Mr. Levesque, and the February 16, 2023, Tenure Charges, filed more than four (4) years after the most recent of the incidents alleged in Charge No. 2, and five and one-half (5½) years after the earliest of alleged misconduct, are stale. Reciting the Decision of Arbitrator De Treux in Matter of Jamelle Hoskins-Nnakwe and State-Operated School District of the City of Newark, Agency Dkt. No. 125-6/17, at 14-15, Respondent argued waiver and laches should apply.

Respondent noted that Arbitrator De Treux, upon considering the validity of tenure charges filed 18 months after alleged misconduct, determined that the incidents were "too dated in time to be properly considered," and reasoned that "[i]f the purpose of discipline is to correct unwanted behavior, the District cannot decline to take disciplinary action at the time of an occurrence only to resurrect the incident to build a [later] case for dismissal from employment." Id. So, too, Respondent argues, the School District cannot establish a "pattern of misbehavior" in this case, given that nearly four (4) full intervening school

years passed between the incidents described in Charge No. 2 and the allegations presented in Charge No. 1. See Matter of School District of the Township of Belleville and Alberto Lopez and William Johns, Agency Dkt. Nos. 125-8/21 and 126-8/21 (Arb. Busto), at 30-31.

The School District opposed dismissal of Charge No. 2. According to the District, the lapse of time between the incidents described in Charge No. 2 and those alleged in Charge No. 1 is not a proper basis for dismissal of Charge No. 2, which is not presented "as an independent basis for Levesque's removal, but an encapsulation of Levesque's continued misconduct that requires serious consideration when determining the appropriate penalty to be imposed." Petitioner's Opposition Memorandum at 2-3. The District argues the letter issued to Mr. Levesque on June 27, 2017, Board Exh. 9, expressly directed him against touching students, and the subsequent reprimand letter issued by the District on August 28, 2018 (Board Exh. 16), advised him his unspecified "physical contact" with a student on June 15, 2018, id., violated Board Policies, and cautioned him that "further inappropriate, unprofessional, unacceptable, or unbecoming comments or conduct, or violation of . . . Board policies will subject you to additional disciplinary measures, including, but not limited to, a withholding of increment and/or termination." Petitioner's Opposition Memorandum at 3. The School District

argued the allegations in Charge No. 2 demonstrate the progressive discipline and professional development Mr. Levesque received in the wake of the conduct unbecoming alleged in Charge No. 2 was insufficient to abate his "habitual misconduct." Id. at 5. According to the District, Charge No. 2 is presented in support of the penalty of dismissal it seeks in the instant proceeding.

In a Conference convened via Zoom on May 17, 2024, I ruled the allegations in Charge No. 2 are stale and therefore untimely, because it would be a violation of due process and unfair to Mr. Levesque to permit the District to commence tenure charges based on allegations addressed through a letter and counseling more than four (4) years prior, and with respect to some of those allegations, after more than five (5) years.

Indeed, I must acknowledge the unfairness inherent in the School District's effort to bolster its allegations with old written reports of then-contemporaneous interviews of 6th graders in 2017 and 2018 who, at the time the Tenure Charges ultimately were filed were in 10th and 11th grade, and by the time a hearing was convened, might be out of high school entirely, if their families even remained in the School District. It would be believable, with these proceedings having commenced in August 2024, for the now 18 year old and 19 year old witnesses to testify, "I don't remember," or perhaps give accounts grossly but

allowably inconsistent with their initial reports, given the passage of time and the potential dimming of recall, thereby effectively denying Respondent's counsel a fair opportunity to impeach their credibility. In short, the nature of the allegations, and the importance to fairness that the testimony of children be based on fresh recollections, strongly weighs against allowing four (4) to five (5) years to pass before the commencement of disciplinary charges which will not have gone to hearing until six (6) or seven (7) years after the alleged events. See 1:53.

I must also consider that the 2017-2018 correspondence does not set forth specific acts of purported misconduct, and Respondent therefore did not receive notice from the School District which allegations he might yet have to defend against in four (4) or even five (5) years should the School District decide half a decade later to commence tenure proceedings. In short, the substantial delay has prejudiced Respondent's ability to defend against the now "old" allegations. Serious misconduct of the sort alleged in Charge No. 2, if true, fairly should have been the subject of reasonably contemporaneous disciplinary proceedings.

These concerns are particularly valid where, as here, Ms. LaForgia herself acknowledged in her Affidavit in support of the Tenure Charges that even a student's very serious allegations

against a teacher might be based on fears and concerns arising from old rumors and preconceptions. See Charge No. 2, §105, citing February 16, 2024, Affidavit of Shelley LaForgia ("LaForgia Affidavit"), Board Exh 36, ¶59. If rumor, in fact, is the source of a child's allegations against a teacher, a Respondent defending against charges as many as half dozen years after such allegations surfaced, would be at a crippling disadvantage to discover and then investigate the sources and impact of those rumors, or learn of events and conversations which might diminish an accuser's credibility.

The foregoing considerations convince me the allegations asserted in Charge No. 2 are properly deemed to have been waived by the School District.

Responding to the District's valid concern a dismissal of Charge No. 2 would prejudice its ability to argue notice and progressive discipline in connection with Charge No. 1, I ruled that the letter to Mr. Levesque regarding the 2017 allegations, the reprimand which followed the School District's 2018 investigation, Board Exhibits 9 and 16, and the training Respondent received to guide his future behavior, see, e.g., Board Exhibit 24, constituted admissible notice to Respondent of the rules, policies and practices he is required to follow lest there be future disciplinary action with potential loss of tenure. Charge No. 2, however, is dismissed, and to the extent

Charge No. 3 incorporates specifications asserted in Charge No. 2, those specifications also are dismissed.²

* * * * *

Following my ruling granting Respondent's Motion for Partial Summary Judgment, and the parties' completion of discovery, seven (7) days of arbitration hearings commenced on August 13, 2024. At the August 13, 2024, hearing, the parties stipulated that the issues presented for my determination in this Tenure Hearing are:

1. **Did Mr. Levesque engage in the conduct alleged in the Tenure Charges filed on February 16, 2024?**
2. **If so, did Mr. Levesque engage in "conduct unbecoming" under N.J.S.A. 18A:6-10, et seq.?**
3. **If so, what shall be the penalty?**

See Transcript of August 13, 2024, Hearing at 14 (1:14).³ The stipulated issue memorializes the parties's concurrence the HIB violations alleged in the Tenure Charges are not before me, but rather were submitted for determination by the Board of Education in proceedings unrelated to this arbitration. The Board's

²At the commencement of the proceedings on August 13, 2024, I recited the "general understanding" pursuant to my May 17, 2024, ruling on Respondent's Motion for Partial Summary Judgment, that "what's before me for decision are allegations concerning conduct, actions, et cetera, in the school year 2022-2023." Transcript of day 1 of the Arbitration, August 13, 2024, at p. 12. See fn. 3.

³Citations to pages in the transcripts will hereafter be denoted as hearing number:page number, such that, for example, page 100 of day 3 of the proceedings, August 27, 2024, will be denoted as "3:100."

determination following a June 15, 2023, hearing is the subject of a pending appeal filed by Mr. Levesque. See Tenure Charges §§65-70.⁴

The proceedings thereafter continued on August 14, 2024, August 27, 2024, August 28, 2024, September 10, 2024, September 17, 2024, and November 1, 2024. The parties each were given full opportunity to present evidence and argument in support of their respective positions. Following my receipt on January 27, 2025, of Post-Hearing Briefs, the arbitration record was closed.

BACKGROUND

The initial allegation in Charge No. 1 of conduct unbecoming by Respondent came from A-1, a student in Respondent's 7th period Social Studies class, who reported in a written statement submitted to an unidentified Middle School Guidance Counselor on October 13, 2022, that Respondent had made physical contact with her which made her uncomfortable. 1:85-86. That written statement is not in the hearing record. The Guidance Counselor, however, referred A-1's allegations to District Human Resources Director Shelley LaForgia, who formerly was Principal of the Middle School. Ms. LaForgia informed Dr. Mortimer as well as her

⁴See also Respondent's Motion for Partial Summary Judgment, at 2, and Exhibit 1 to Respondent's Post-Hearing Brief, Order of Ernest M. Bongiovanni, ALJ, in OAL Dkt. No. EDU 10735-23, Agency Dkt. No. 248-9/23.

Co-Affirmative Action Officer in the School District, Dr. Bronwen Calderon, of A-1's allegations. 1:86. Ms. LaForgia immediately commenced an investigation by contacting A-1's parents and scheduling an interview with A-1 for the following day. Ms. LaForgia promptly assembled an Investigation Committee consisting of herself, Dr. Calderon and Middle School Guidance Counselor Christine Androulakis. 1:86-87.

The Committee interviewed A-1 in the morning of October 14, 2022. Immediately following that interview, the Committee questioned two (2) other students, W-3 and W-4, who had been identified by A-1 as classmates who experienced and witnessed the behavior by Respondent reported by A-1. That same morning, after the Committee completed its questioning of W-3 and W-4, Ms. LaForgia contacted the Institutional Abuse Investigation Unit of the New Jersey Department of Children and Families ("IAIU"). Joint Exh. 2. She reported to IAIU "two separate incidents" involving actions by Respondent towards A-1. Specifically, Ms. LaForgia reported A-1's allegation "she was being 'squeezed' by" Mr. Levesque when he "sat next to her, so his outside upper arm and leg were pressed against [the] child's." Joint Exh. 2, 10/14/22 Screening Summary at 1. According to the IAIU records, Ms. LaForgia told IAIU intake that she had spoken to two other students in the class, who gave the same account. Id. The IAIU screener told Ms. LaForgia that the allegations, not having "a

sexual nature," should be addressed by the School. Id. at 2.

Thereafter, on October 19, 2022, following the Committee's interviews that day of A-2, A-4, A-5, W-1 and W-2, Ms. LaForgia again called IAIU, and told the screener that,

another child came forward alleging the teacher regularly says good job when she gets a question right and rubs her back. Another student said she stays after school for 1 on 1 with the teacher and he rubs her shoulder.

Id.⁵ IAIU again determined that the alleged conduct, while inappropriate, was not sexual in nature and therefore should be addressed by the District, not IAIU. Id.

Thereafter, at 1:44 p.m. on October 20, 2022, after A-3 made allegations to the Investigation Committee of being rubbed on her knee and thigh by Respondent, Ms. LaForgia made a third report to IAIU, and the Agency thereafter opened a case file and commenced an investigation which it completed on December 13, 2022. On December 14, 2022, IAIU released its Findings that "Sexual Abuse-Sexual Molestation is Not Established [and] A-3 was not abused or neglected by Teacher Paul Levesque." Joint Exhibit 2, Investigation Summary and Report in Investigation ID: 21549730

⁵The October 14, 2022, Screening Summary was amended on October 19, 2022, to include the new allegations, although the screening worker did not record the date of Ms. LaForgia's call back. Also, I find no documentation in the hearing record of an interview with any student who claimed she was touched after school during one-on-one help.

("Report") at 12-14.⁶ See also fn. 15, below. IAIU followed up with correspondence to Dr. Mortimer, as well as to A-3's parent and to Mr. Levesque, summarizing IAIU's Findings.

That correspondence included a "DISCLAIMER" on every page that,

This report documents an IAIU investigation and references statements made by people who were interviewed during that investigation. The report also sets forth the opinions of IAIU regarding the information obtained during that investigation. Neither IAIU's findings, those statement, nor the IAIU's opinions, have been adjudicated, or decided in a court of law, and should not be considered binding or conclusive. No determination as to the accuracy of the allegations, statements or accounts of the incident has been made.

Joint Exh. 2. In short, IAIU's comments regarding harm or risk of harm to A-3 are not a finding by IAIU that information its Investigator received from A-3 was accurate, honest or reliable. Thus, the IAIU Report is not binding or conclusive with respect to any issues I am required to decide in this proceeding, including the honesty and credibility of any witness.⁷

Following the School District's receipt of IAIU's Findings, the Investigations Committee reconvened on January 30. , 2023, by

⁶The Report stated that "some information indicates that A-3 was harmed or placed at risk of harm." Joint Exh. 2, Report at 12.

⁷I am not precluded, however, from considering whether statements by students which are reported in interview notes prepared by the IAIU Investigator are inconsistent with statements by those students memorialized by the Investigations Committee or with testimony in the instant proceeding.

interviewing Mr. Levesque. Dr. Mortimer was present for the questioning. Respondent denied any conduct unbecoming. No additional interviews of students or staff were conducted by the Committee, and on February 16, 2023, the Tenure Charges against Mr. Levesque were filed.⁸

The Charged Misconduct

The Tenure Charges allege conduct unbecoming in connection with alleged behavior by Respondent that was reported by five (5) female students ("accusers") in four (4) of the five (5) 6th grade Social Studies classes Mr. Levesque taught in the Fall Semester of the 2022-2023 School Year. The accusers each testified at arbitration, and are named in the hearing record as A-1, A-2, A-3, A-4 and A-5.⁹

⁸Upon a Motion by Respondent on April 16, 2024, for production by IAIU of all records pertaining to its Investigation, IAIU and the New Jersey Attorney General's Office produced the requested records and authorized my release of said documents to the parties in redacted format and subject to certain other terms in order to ensure statutorily protected confidentiality. The IAIU records, in redacted format, were admitted into the record of this case as Joint Exhibit 2.

⁹In a March 13, 2023, Investigation Report, Board Exh. 25, Ms. LaForgia labeled the five (5) students who testified at arbitration as "Targets," and other students she spoke to as "Witnesses." At arbitration it was agreed the formal record of the proceedings would not identify any child by name, and the parties stipulated that the five (5) children identified by Ms. LaForgia as "Targets," and who would be testifying, would be identified in the transcript, briefs and my Decision as A-1, A-2, A-3, A-4 and A-5. I have drawn no inference or reached any factual determinations based on the nomenclature. Thus, children who were interviewed by Ms. LaForgia but did not testify, are simply identified in the record as W-1, W-2, W-3 and W-4. Other

A-1

A-1 was a female 6th grade student in Mr. Levesque's Period 7 Social Studies class in the Fall Semester of the 2022-2023 School Year. See Board Exh. 39.¹⁰ She met with Ms. LaForgia, Ms. Dr. Calderon and Ms. Androulakis (the "Investigation Committee") on October 14, 2022, after she had complained to a Guidance Counselor, possibly Ms. Androulakis, that Respondent had engaged in behavior she believed was inappropriate and made her uncomfortable.

Paragraph 7 of the Tenure Charges alleges that A-1 informed

children whose names came up in the course of the School District's investigation are denoted in the Transcript and in this Decision as "S-__." A spreadsheet prepared by the District in response to discovery from Respondent identifies by name the students labeled "A-_", "W-_", and "S-__". That spreadsheet is entered in the record as Joint Exhibit 1 ("J-1"). It lists a "witness," W-6, who did not testify. The spreadsheet does not indicate there is a "W-5." Consistent with the agreement on the confidentiality of student names, the children listed on the spreadsheet were not identified by name in the hearing transcripts. I have attempted in writing this Decision to avoid revealing information which might make any child witness identifiable and, as much as possible, even in my findings, I have sought to protect students' identities even from discovery by persons familiar with the history of these charges. Further, some children mentioned during hearing testimony do not have assigned codes in J-1. To protect their identities, I have extended the coding method to those individuals, using the designation "S-__."

¹⁰Board Exh. 39, a list of students in each of Mr. Levesque's Fall 2022 Social Studies classes, was amended at arbitration to list A-1 in the Period 7 class. 1:130-31. When the list of students was printed on August 13, 2024, it reflected the fact A-1 had been transferred out of Period 7 following her request on October 14, 2022, to have a different Social Studies teacher. 2:189.

the Investigation Committee that on an unspecified date in the Fall 2022 Semester, Respondent "sat so close to [her] that his arm and leg touched her arm and leg." In para. 8, the Tenure Charges allege that on two (2) unspecified dates, Respondent squeezed so close to A-1 that "his arm and leg touched her arm and leg," and that Respondent "also looked at her in a very strange way." Paragraph 8 further asserts A-1 told the Committee that "when she and other students sat on the floor for group work, [Respondent] squeezes into a very small space next to her," even though "there was plenty of room on the other side of her where he could sit without touching her."

Paragraph 8 adds that A-1 did not like it when Mr. Levesque "sat too close to [her], and his arm and leg touched hers . . . she did not like it and knew that it was wrong." Paragraph 8 further alleges that "[a]fter those two incidents, A-1 "had to think of ways to sit so [Respondent] would not put his arm and leg so they touched hers," and she therefore "made sure to sit next to the wall so [Mr. Levesque] could not squeeze next to her and touch her." According to para. 8, A-1 told the Committee that W-3 and W-6, who also were in Respondent's Period 7 Social Studies class (see Board Exh. 39), saw what Mr. Levesque "did to A-1."

Further with respect to A-1, para. 9 of the Tenure Charges alleges that A-1 became "very uncomfortable going to

{Respondent's} class because she never knew if he would squeeze in next to her [and] did not want to go to Levesque's class because of how uncomfortable [he] made her feel." Paragraph 9 adds that "A-1 had a hard time concentrating in all of her classes because she did not know what [Respondent] would do to her when she was in his class."

A-2

The Tenure Charges allege in para. 11 that the Committee on October 19, 2022, met with A-2, a sixth grader in Respondent's 9th period Social Studies class.¹¹ Paragraph 12 of the Charges asserts A-2 told the Investigation Committee "that Levesque taps and sometimes rubs her shoulder." Paragraph 12 further alleges that on an unspecified date "when [A-2] was talking in class and should not have been, Levesque got down on his knees and asked her to tap him on the shoulder," and that A-2 told the Committee "she did not think it was a big deal."

Further, with respect to A-2, the Tenure Charges assert in para. 13 that A-2 described Respondent's behavior as "weird," and offered to the Committee an "unsolicited opinion" that as a consequence, he "maybe [be] suspended but not fired" for his "behavior." Further, in para. 13, the Tenure Charges allege A-2 told the Investigations Committee "it was weird when Levesque got

¹¹A-3, W-1 and W-2 were also in Respondent's 9th period Social Studies class. Board Exh. 39.

on his knees for her." According to the allegations in para. 13, A-2 "appeared to be concerned that Social Studies class would be boring now because 'it won't be fun anymore since everyone is reporting [Mr. Levesque].'"

A-3

According to para. 14 of the Tenure Charges, the Investigation Committee interviewed A-3, a sixth grader in Respondent's 9th Period Social Studies class, on October 20, 2022. See fn. 9. In para. 15, the Tenure Charges allege,

A-3 . . . began by confiding that Levesque was "always hanging out by me." . . . A-3 revealed that Levesque always touched her shoulder and used his thumbs on both hands to massage her shoulder. . . . She said that Levesque would "grab under my desk and do the same thing to my knee." . . . When LaForgia asked about the frequency of Levesque touching her this way, A-3 said that he touched her "a good amount of times, most classes." . . . She offered that Levesque touched her thigh "six-ish" times and her knee "fifteen-ish." In a disturbing recounting how Levesque touched her, A-3 said,

He started off with the shoulders, then my knee and then worked up to the thigh and I was thinking how much longer can he do this and where else is he going to go? There are only so many places he can go.

According to para. 16 of the Tenure charges, this behavior by Respondent distracted A-3 to the point she spent Social Studies class looking around to see where Mr. Levesque was at the same time she was "trying to do her work." Further, as alleged in para. 17, A-3 told the Committee "that Levesque's behavior was

not normal and that he only acted in such a way when Ann Marie Castellini . . . the Special Education in-class support teacher, was teaching because she could not see what Levesque was doing to his students."¹²

Further, with respect to A-3, para. 18 of the Tenure Charges asserts that Mr. Levesque, on an unspecified date, gave A-3 "a disgusting grin" while she was kneeling by her locker. According to the Charges, A-3 told the Committee, "I didn't think a teacher could look at me like this. It looked like he was happy to see me down on my knees." According to para. 19, A-3 told the Investigation Committee that she was getting "badly creeped out and scared by being in Levesque's class," including on school picture day when Respondent "told A-3 that she looked good in her outfit," which "made [her] feel weird." In para. 19, the Tenure Charges allege that A-3 "commented about how Levesque stares non-stop at her, and that he was "always" looking at her and making her feel uncomfortable and scared.

In para. 20, the Tenure Charges allege that Respondent had engaged in past behavior similar in nature to what A-3 described. According to para. 20, A-3's sister (S-5), "confirmed this type of behavior had previously happened in his class." According to

¹²Ms. Castellini is a Special Education Teacher at the Middle School. For approximately the first six (6) weeks of the 2022-2023 School Year, she co-taught with Mr. Levesque in two 6th grade Social Studies classes, 4th period and 9th period, which contained a mix of General Education and Special Education Students. 4:64-66.

para. 21 of the Tenure Charges, A-3 told the Committee that "she would try to keep space between her and Levesque, but he would just roll his chair toward her to get closer," and that Respondent would try to delay her from walking away from him by asking about her family. The Tenure Charges further allege in para. 21 that A-3's sister (S-5) recalled "that Levesque had used that same tactic previously as well."

A-4

With respect to A-4, a sixth grade female student in Respondent's Period 8 Social Studies class in the Fall Semester of the 2022-2023 School Year, the Tenure Charges assert in para. 23 that Ms. LaForgia opened the Committee's October 19, 2022, interview of A-4 by telling her she "want[s] A-4 to feel comfortable and address things they were hearing about Levesque's class." Paragraph 23 alleges "A-4 responded by saying that everyone tells her she is overreacting but she feels like Levesque is doing things that she is uncomfortable about." Further, according to Para. 23, "A-4 described how Levesque touched her shoulders and rubbed down her arms whenever he is by her in almost every class."

Paragraph 24 of the Charges alleges that A-4 asked to be transferred to another class with a different teacher "[w]hen LaForgia asked [her] what would help her feel comfortable in class." According to Para. 24, A-4 did not tell her parents

about Mr. Levesque "because she was embarrassed, nervous, and not comfortable doing so."

A-5

Paragraph 25 of the Tenure Charges asserts that Ms. LaForgia contacted the parents of A-5, a 6th grade female student in Mr. Levesque's Fall 2022 4th period Social Studies class, see Board Exhibit 39, and the Investigation Committee subsequently interviewed A-5 on October 19, 2022. According to para. 26 of the Tenure Charges, A-5 "revealed" to the Investigation Committee that Mr. Levesque "will touch [her] shoulders and back when Ms. Castellini is out of the room." Paragraph 26 additionally alleges that A-5 "defined touching as rubbing her shoulders and back," and told the Committee Respondent does this when A-5 gives a correct response to a question. According to para. 26, when male students give correct answers, Mr. Levesque says "good job." Further, according to para. 26, A-5 told the Investigation Committee she has seen Respondent "touching other female students, such as S-9."

The Non-testifying "Witnesses" Interviewed by the Committee

The Tenure Charges allege conduct unbecoming based on the Investigation Committee's interviews of five (5) other "victims" (see Para. 28) who were students in one of Respondent's Fall 2022 Social Studies classes. These five (5) additional "victims" are

identified in the hearing record as W-1, W-2, W-3, W-4 and W-6. Joint Exh. 1. None of these alleged additional "victims" testified at arbitration. The hearing record does not explain why.

W-1

According to para. 28 of the Tenure Charges, the Committee interviewed W-1 on October 19, 2022. W-1 was in Respondent's 9th period Social Studies class at the beginning of the Fall 2022 semester, along with A-2, A-3 and W-2. Board Exh. 39. Para. 29 of the Charges asserts W-1 told Ms. LaForgia in a previous private conversation, and then also told the Committee during the October 19, 2022, interview, that Respondent "kind of favors A-2 and everyone knows it but A-2 doesn't think so, but it makes me uncomfortable."

Further, according to para. 30 of the Tenure Charges, W-1 described to the Committee "how Levesque would come up behind students without saying a word or get on his knees and just stare at students." Paragraph 30 alleges that W-1 "called Levesque's behavior weird," and additionally told the Committee that, "[s]ince students did not know when Levesque would decide to put his hands on students' shoulders, they did not know it was coming." According to para. 30, W-1 said that behavior by Respondent "was weird."

The Tenure Charges allege in para. 31 that W-1 told the

Investigation Committee "that she, S-10, and S-11 observed how Levesque would stand outside the classroom door and stare as W-2, another sixth-grade student, would go into the bathroom." According to para. 31, Ms. LaForgia asked W-1 what she could do to make W-1 "feel better or comfortable," and W-1 "asked if Castellini could teach the class because 'that would make us feel so much better.'" (emph. supp.)

W-2

The Tenure Charges state in para. 33 that the Committee on October 19, 2022, interviewed W-2, another sixth grade female student in Respondent's Fall 2022 period 9 Social Studies class. See Board Exh. 39. According to para. 34 of the Charges, W-2 stated at the start of the October 19th interview that she knew the Committee had spoken to W-3 (who was interviewed by the Committee on October 14, 2022, see para. 38 of the Charges) about "how much Levesque touches girls in school and especially W-1."¹³ Paragraph 34 of the Charges further alleges W-2 told the Committee "that Levesque touches someone's shoulders and then goes down their back," and then confirmed after observing a physical demonstration by Ms. LaForgia, "[y]eah, he does that with rubbing the shoulder and then goes down the back."

Further with respect to W-2, the Tenure Charges assert in

¹³W-3, unlike W-1 and W-2, was in Respondent's Period 7 Social Studies class.

para. 35 that W-2 stated "that she saw when Levesque went on his knees in front of [A-2] and then 'went on A-2's shoulders . . . because she was talking when he was talking.'" According to para. 35, W-2 added that Respondent told A-2 "to tap him on the shoulder" while she mimicked making a prayer. According to W-2, A-2 "looked very uncomfortable as all the class did when Levesque acted so strange." Para. 35.

Paragraph 36 of the Tenure Charges asserts W-2 told the Committee that Respondent "only touches girls," and added that "when she heard about the other girls, she knew it had to be reported." The Tenure Charges allege in Para. 36 that Ms. LaForgia asked W-2 about other educational staff in Mr. Levesque's 9th period Social Studies class, and W-2 recalled that Ms. Castellini and Veronica Marsico, a one-to-one personal student aide, "are helping other students and 'don't really say too much.'"

W-3

According to para. 38 of the Tenure Charges, the Investigation Committee interviewed W-3, a sixth grade girl in Respondent's Period 7 Social Studies class on October 14, 2022. See Board Exh. 39. Paragraph 38 asserts that at the start of the October 14, 2022, interview of W-3, and even before W-3 offered any information, Ms. LaForgia asked her "what comes to her mind as a red flag that makes her uncomfortable in Levesque's social

studies class," and in Para. 39 the Tenure Charges allege that W-3 responded, "Levesque is always 'right next to us,' [and] really close to A-1 and W-4." Paragraph 39 asserts W-3 added that "Levesque's arms are touching her all the time."

In para. 40, the Tenure Charges allege that Ms. LaForgia asked W-3 how many times Mr. Levesque sat close to her, and W-3 answered "at least 5 times." According to para. 40, W-3 identified W-4, S-32 and S-33 as other students in the group of girls to whom Mr. Levesque sat close.

W-4

The Tenure Charges allege in Para. 42 that W-4 was interviewed by a modified Investigation Committee on October 14, 2022, wherein Guidance Counselor Caitlin Fabrocini stood in for Ms. Androulakis. Under para. 43, the Tenure Charges assert that W-4, when asked about Mr. Levesque, told the Committee that Respondent "talks loudly and comes very close."

* * * * *

REVIEW OF HEARING RECORD

I have conducted a very careful review of each student's hearing testimony. I have also performed a detailed review of the Investigation Committee's interview notes, as these were the evidentiary foundation of the Tenure Charges. Indeed, the relevant paragraphs of the Tenure Charges expressly recite that the allegations therein are drawn from those notes (Board Exh.

25), and from the LaForgia Affidavit, Board Exh 36, which, with respect to paragraphs 66-123 therein, is itself based on the Investigation Committee's memorialization in Board Exh. 25 of its interviews of A-1, A-2, A-3, A-4, A-5, W-1, W-2, W-3 and W-4.

I have also very carefully reviewed the IAIU Investigator's notes of his interviews of A-1, A-2, A-3, A-4, A-5, W-1, W-2 and W-3. See Joint Exh. 2, Report at 5-9. I have evaluated the students' statements to the IAIU Investigator, as memorialized in those notes, for consistency with the Investigation Committee's notes, as well as with hearing testimony. The parties each had full opportunity at arbitration to ask each testifying student questions about her interview with the IAIU Investigator, as well as about the accuracy of his notes. See, e.g., 5:29, 5:52-54, 5:67-68, 5:85, 5:130, 5:132, 5:158-59, 5:220-21, 5:256, 6:89, 6:119.

As previously noted, the Investigation Committee commenced its interviews of students on October 14, 2022, when Ms. LaForgia, Dr. Calderon and Ms. Androulakis met with A-1. Dr. Calderon "took notes" of A-1's interview (as well as of future interviews of other "A-" and "W-" witnesses) using the "Google Docs" speech to text software. 1:89. The program produced a document entered into evidence as Board Exh. 25, which Ms. LaForgia and Dr. Calderon "review[ed] . . . for accuracy [to] ensure that all of those documents captured the interview

correctly." 1:90. The notes, thus, are not a verbatim record of the interviews.¹⁴

Indeed, Dr. Calderon recalled that she and Ms. LaForgia performed post-interview reviews of the Google Docs notes which included making edits to conform the document with Dr. Calderon's or Ms. LaForgia's recollections of what the students said. 3:43, 49. Dr. Calderon added that no effort was made to distinguish the program's capture of the student's actual words, as by using quotation marks, from entries which reflected edits she and Ms. LaForgia made to the transcript. 3:53-54. In addition, the students' statements in the Investigation Committee's initial interviews are written in the third person tense (A-1, W-3 and W-4). Notes of subsequent interviews are written in the first person, giving the incorrect impression they are verbatim statements. See 3:48-49, 54-55.

Following the October 14, 2022, Interview of A-1, the Investigation Committee that same day interviewed W-3 and W-4,

¹⁴For each of the accusers, the School District prepared a sworn affidavit based on Board Exh. 25. Board Exhibits 37a-37d. I have determined these affidavits are not probative of the issues presented in the proceeding. The children, A-1, A-2, A-3, A-4 and A-5, were not involved in the drafting of the affidavits, and I am persuaded, having considered the circumstances under which the affidavits were presented for signature did not ensure the children did not feel pressured or coerced. Moreover, many of the statements upon which the affidavits were based, Board Exh. 25, were obtained through leading questions and, as noted above and below, were edited by Ms. LaForgia and Dr. Calderon. As A-2 explained, she signed her affidavit despite its errors because she did not understand she had the right to correct the document before signing it. 5:251-54.

two girls identified by A-1 as classmates in Period 7 who, she asserted, could substantiate her statements. The Committee thereafter convened interviews with other girls who made reports to Guidance that they too had experienced or witnessed physical contact or other improper behavior by Mr. Levesque towards female students, or who were identified by interviewees as having information. Accordingly, following the three (3) interviews on October 14, 2022, additional students, A-5, W-1, W-2, A-2 and A-4, were interviewed by the Committee in that order on October 19, 2022.¹⁵

On October 20, 2022, the Investigation Committee interviewed Ms. Castellini and Ms. Marsico. Thereafter, that same day, the Committee questioned A-3. Based upon A-3's extremely serious allegations, Ms. LaForgia again contacted IAIU, which commenced its Investigation. As required by IAIU's action, Ms. LaForgia suspended the School District's investigation, including the Committee's interviews of any other students or teachers.¹⁶

Record documents (Joint Exh. 2) indicate IAIU opened its Investigation on October 20, 2022, and assigned Ireneusz (Irek) Taflinski as Principal Investigator. Mr. Taflinski conducted

¹⁵After A-4's interview, A-2 on her own initiative returned to add to and clarify what she told the Committee. 1:148. Board Exh. 25 at 14.

¹⁶None of the girls interviewed by the Committee were called back to give additional information. A-2 was the only girl who was spoken to twice, which, as noted, was upon her own initiative.

student interviews at the Middle School on October 21, 2022.¹⁷ He interviewed Mr. Levesque on November 2, 2022, and spoke twice to Ms. LaForgia, on October 21, 2022 and November 22, 2022. The IAIU completed its investigation on December 14, 2022. The Investigation Committee resumed the School District's investigation with its January 30, 2023, interview of Mr. Levesque.

Despite information provided by several students that the girls had engaged in conversations about Mr. Levesque prior to their interviews, and one girl's assertion there had been conversation among girls about starting a rumor about Mr. Levesque, there was no follow up by the Committee regarding the frequency and substance of those conversations among the girls. So, too, the Committee decided, after completing its single round of interviews, including its interview of Mr. Levesque on January 30, 2023, that it would not be fruitful to re-convene interviews of students with whom the Committee met in October 2022. Nor did the Committee deem it might be probative to interview students not previously questioned, who sat next to or across from A-3, A-4 and A-5, or even to speak with any other students in class who might have noticed, given the locations of their assigned seats, something as "weird" as their Teacher on a nearly daily basis,

¹⁷Within J-2 is IAIU's Investigation Summary, Investigation ID: 21549730. It is a 14 page Report which contains summaries prepared by Mr. Taflinski of his interviews.

for a month or longer, messaging the same girl's shoulders, back or arms.¹⁸

Ms. LaForgia explained the Investigation Committee's decision to close its investigation without making such further inquiry:

"Yeah. We decided not to go back and interview those students. So many months had passed. There was such an opportunity for, you know, as we saw it just in a few days discussion in order to make memories less accurate than they would have been in the immediate time. And additionally, the students who we did speak with it was across four different classes, we got very consistent - very consistent reports from students of similar behaviors across various instructional periods. These are not students who were friends with one another.

1:189.¹⁹

¹⁸Although there were seating charts for each of Respondent's classes, 2:27-28, the Investigation Committee did not determine it might be probative to know where students were seated during Respondent's Social Studies classes, and on that basis identify students who might corroborate or refute the accusers' and witnesses' accounts.

¹⁹In fact, and contrary to Ms. LaForgia's assessment of the information the Committee had obtained from students "across four different classes," there is no evidence in the arbitration record which corroborates the allegations of A-3, A-4 or A-5 that Respondent routinely stood behind them and massaged them during class. There was no testimony from any students in the same classes as A-1, A-3, A-4 and A-5, including from A-2 who, like A-3, was in Respondent's Period 9 class, that they saw Respondent massage or give undue attention to any specific girl. Further, W-1, W-2 and W-3, who did not testify, but who did tell the IAIU Investigator they each had observed Respondent massage A-1's shoulders, Joint Exh. 2, Report at 8, were directly contradicted by A-1, who told Mr. Taflinski Respondent had never touched her shoulders, *id.* at 6, and impeached by A-1's admission under oath at arbitration that Respondent had never touched her with his hands. 6:102.

Ms. LaForgia asserted the Committee had confirmed the students it interviewed between October 14, 2022, and October 20, 2022, were not friends, after asking Ms. Androulakis and a 6th grade Guidance Counselor if they had observed any of the "A-" and "W-" student witnesses socializing with one another. 1:191. The Counselors responded that the girls "ran in different social circles during unstructured time." Id.

In fact, the hearing record reveals that the "A-" and "W-" witnesses were all part of an intricate web of intersecting relationships. In 6th grade A-1 was friends with A-2 and A-5, as well as with W-2, W-3 and W-4. A-2, in addition to her friendship with A-1, was friends with A-4, A-5 and W-2. A-3 was close friends with W-2, and "really close with" A-1 and A-5. A-4 was also friends with A-5. 5:37, 81, 82, 143- 205, 207, 260-61, 244-45, 278; 6:91-92, 109, 121, 122. When the Committee met with W-2 at 9:10 a.m. on October 19, 2022, and the student opened the interview with a request that W-1 or W-3 (it is not clear which one) be with her during the meeting, Ms. LaForgia might have asked W-2 what specific conversations she and her friends had been having about Mr. Levesque, but she did not make the obvious inquiry. See Board Exh. 25 at 24. In fact, apparently based upon inaccurate information from the Guidance Counselors, the Committee elected against investigating whether there had been any conversations among the accusers before any of them initiated

their complaints about Mr. Levesque.

Very troubling is the Investigation Committee's cavalier disregard of A-2's report on October 14, 2022, that a group of girls, which included A-1 and A-4, along with another girl, possibly A-5, spoke about starting a "rumor" that Respondent had touched A-2's "butt," and that one or both of A-1 and A-4 had opined that Respondent is a "pedafile" who once "dropped his pencil to see under a girl's skirt." Board Exh. 25 at 14. See 5:271.

Ms. LaForgia's testimony that the Committee decided against conducting more interviews, including second interviews of some of the girls, because further inquiry would not illuminate any facts, is perplexing, given the student interviewees revelations during their meetings with the Investigation Committee that they had been having substantial conversations with other girls about Mr. Levesque.

For example, W-2 told the Committee, "we notice how much he touches the girls and he touches W-1," Board Exhibit 25 at 24 (emph. supp.), but the Committee neither asked who W-2 was referring to when she said "we," and there was no follow-up with W-1 to verify W-2's allegation Respondent had touched W-1.²⁰ A-4

²⁰Ms. LaForgia did ask W-1 during the interview which immediately preceded the Committee's interview of W-2 on October 19, 2022, "has [Mr. Levesque] ever touched you?", but W-1 avoided the inquiry by responding, "he does that to everybody." Board Exh. 25 at 23. Ms. LaForgia asked for details, which led to W-1 describing how Respondent "places his hands on our shoulders,"

told the Committee, "everyone tells me I'm overreacting," and explained that "everyone" included S-6, S-7 and S-8. Yet, the Committee showed no curiosity about what the girls had discussed. Board Exh. 25 at 19. A-2, in addition to exposing the shared opinion of several of her classmates that Respondent was a pedophile, id. at 14, recounted the fact some girls thought he had romantic inclinations towards children, id. at 15, and discussed whether or not he likes them. Id. A-2 revealed she had heard students talking about Respondent rubbing students' backs; and that a topic of a conversation she had with A-1 included A-2's insistence Respondent "has a wife and kids and . . . he can't have interest in 11 year olds." Board Exh. 25 at 14-15. Ms. LaForgia did not doubt A-2's recollection, responding, "I'm sure the word is out and people are talking." Id. at 15.

Yet, Ms. LaForgia, despite knowing by the time she interviewed A-2 on October 19, 2022, that "the word [was] out," did not explore the possibility the four (4) interviews she had conducted earlier that morning with A-4, A-5, W-1 and W-2, as

(emph. supp.), but neither Ms. LaForgia nor Dr. Calderon asked W-1 to identify by name any student she had seen Respondent touch, or who had spoken to W-1 about being touched by him, or whom Mr. Levesque allegedly stared at while on his knees. Id. Nor did the Committee seek to re-interview W-1, W-2 or A-2, or speak to anyone else in the 9th period class, after A-3 made shocking allegations of Mr. Levesque hovering around her and fondling her on a nearly daily basis. Given that W-1 was the lone student, besides A-3, who mentioned seeing Respondent staring at students while on his knees, I cannot fathom why the Committee did not recall W-1 after it heard A-3's allegations.

well as those the Committee previously convened on October 14, 2022, might have been tainted, or at least influenced, by the fact the witnesses, who the Committee believed had been acting independently, were possibly in a network of girls engaged in gossip and rumors about Mr. Levesque. Minimally the Committee might have brought each student back to the interview room, and asked them to whom they had spoken about Mr. Levesque, and what they spoke about, if only to test their credibility.

The Investigation Committee's lack of curiosity was, in some cases, remarkable. A-3 shared with the Committee the most alarming allegations against Respondent, which included her assertion Respondent since the second week of school "would always be behind me," and that he "non-stop stares at me," "is always looking at me," and "most classes" would "touch my shoulder and use his thumb to massage [it]," to the point she concluded that the classroom "spot" behind her was "his favorite" in the room. Board Exh. 25 at 16-18. A-3 further told Ms. LaForgia and Dr. Calderon that Respondent grew more bold in his physical attention to her as the semester progressed, eventually going down on his knees to rub her left leg, and that he engaged in this public display of inappropriate behavior nearly every day, and yet did so in secret, without ever being seen by Ms. Castellini, Ms. Marsico, or any of her twenty (20) classmates in 9th period Social Studies class, including by her friend, S-10,

who sat immediately to A-3's right, or by either of two (2) boys seated across from her, one of whom, A-3 recalls, was S-47.²¹ 5:39.

Had the Investigation Committee been even moderately skeptical at A-3's implausible allegation Respondent was always standing behind her in his "favorite spot," staring at her, and routinely walking up to her to massage her shoulders in open view of a full classroom of students and faculty, and periodically crouching low to the ground next to her left leg to sneakily caress her knee and thigh without detection, Ms. LaForgia and Dr. Calderon might have learned that the desk cluster in front of Respondent's favorite "spot" from which he fixated on A-3, included S-47, who sat facing A-3 "during the whole thing," 5:39, and by whose side Marsico was stationed "at all times during the school day," 3:119, including during Mr. Levesque's 9th Period Social Studies class. 3:120.

Even when S-47 became embarrassed and insecure about Ms. Marsico's constant focus on him, Ms. Marsico would disguise her role as his full-time one-on-one aide by working with other children, but S-47's seeming independence from his assigned aide

²¹I have created the code name "S-47" for the student identified by Ms. Marsico in her testimony, 3:118-19, as the student to whom she was assigned to as "one-on-one aide" throughout the school day during the 2022-2023 School Year. 3:118. In addition, I have determined the Transcript in some places confuses W-2 and S-10, who share a first name. Ms. LaForgia clarified that S-10, not W-2, sat next to A-3 in 9th period Social Studies class. 1:177.

was merely an illusion. Ms. Marsico explained that wherever she went in the classroom her "main focus" remained on him S-47.

3:126-27. In Ms. Marsico's hearing testimony, which was honest in my judgment, she recalled that the desks in Mr. Levesque's classromm were arranged in clusters, and she testified that even when she moved away from S-47's desk, in order not to draw attention to his special needs, she still routinely monitored his progress, stepping in when she determined he needed her help.

3:126-29. Ms. Marsico added that she was "able to see all the students." 3:128.

The Investigation Committee did not consider the potential negative impact on A-3's truthfulness from Ms. Marsico's report she saw none of the conduct by Respondent that A-3 described. Yet, it is undeniable, from the weight of credible testimony that Ms. Marsico's primary daily focus was S-47, a student seated approximately three (3) feet in front of A-3. Indeed, S-47's assignment to the seat directly across from A-3 easily would have been discovered, either by asking A-3 to name the students who sat next to or across from her, or by obtaining Mr. Levesque's seating charts. However, the Investigation Committee made no attempt, at least according to the interview notes, at identifying and then questioning the substantial number of students, including obviously S-47, who could not have missed seeing the unusual and alarming behavior by Mr. Levesque which

A-3 described to the Committee.

The Investigation Committee did not deem it might be probative of A-3's credibility to test her insistence that Respondent was fixated on her daily, as he stared at her from behind, nearly always massaging her shoulders, and that on approximately 20 days he kneeled beside her and rubbed a portion of her leg, by asking other students in the 9th period class what they saw. There was a plain opportunity and, more than that, an obligation for the Committee to identify witnesses who could corroborate or dispute A-3's recollection their Social Studies teacher was fixated on her during "most classes."

It would have been a challenge, to say the least, for an impartial investigator to have concluded from the information provided by A-3 that every single one of the twenty (20) other 6th graders in Respondent's 9th period Social Studies class was so focused on his or her work that he or she did not see any of the behavior by Respondent that A-3 described, if it occurred. It would be astonishing, in fact, that no one noticed his "weird" attention to A-3, given the undisputed evidence Mr. Levesque is an animated teacher who engages in "outlandish" strategies, such as doing head stands, see Board Exh. 25 at 30, to capture his students' attention.

I would expect, given Mr. Levesque's teaching style, students would be watching him; so, too, I would expect the other

girls in the Period 9 Social Studies class who told the Committee they had seen Respondent touch girls on their shoulders or arms, W-1 and W-2, would have been laser focused on his activities around the classroom, if those girls' statements about him were true. Considering, as well, Ms. Marsico's credible recollection she consistently and successfully monitored S-47, A-3's desk mate, from everywhere in the classroom during 9th period Social Studies class, I find the Investigation Committee's decision against interviewing the students who sat next to and across from A-3, or any students who easily would have observed Mr. Levesque massaging A-3's shoulders had they been paying any attention to him, was a stunning failure to investigate.

The Investigation Committee might have chosen to test A-3's claim she tried repeatedly, when Respondent was rubbing her knee or her thigh, to get the attention of S-10, by simply interviewing S-10. The Committee, however, apparently made a decision it was not necessary to question a girl, S-10, who sat inches away from A-3 while Respondent allegedly massaged A-3's shoulders for long spells nearly every day.

Nor did the Committee seek even to test the veracity of A-3's claim Mr. Levesque stationed himself daily and for substantial periods of time, directly behind her, as by simply speaking to S-47, who reasonably might have thought Mr. Levesque was staring at him, rather than at A-3, inasmuch as Respondent,

if he stared non-stop at A-3 from behind, would have been directly facing S-47.

So, too, would Ms. Marsico not at least have noticed that Respondent appeared to be obsessively focused on S-47's desk cluster? Yet, Ms. Marsico testified she saw nothing to indicate Respondent seemed extra focused on any group of students. 3:137.

According to A-3, S-10 did not notice Respondent's presence because she was immersed nearly every class in games she played on her Chromebook.²² 5:71. A-3 initially claimed Mr. Levesque did not care that S-10 was playing games during class instructions, 5:73, but she reversed herself on cross examination, admitting that Respondent frowned upon students using their Chromebooks to play games. 5:74. A-3 did not offer a reason either of the boys seated directly across from her, including S-47 (the other boy being unidentified in this record), would not have noticed Respondent's constant presence directly in front of them.

The Investigation Committee similarly betrayed a lack of curiosity about verifying A-5's claim that "every morning" while Respondent was teaching during 4th period Social Studies class, in which Ms. Castellini also taught as Special Education Teacher, Respondent would reward A-5 with a shoulder and back rub whenever

²²I reiterate my determination the transcript incorrectly identifies W-2 as the student who sat next to A-3. It was S-10. See fn. 21, supra at 35.

she gave a correct answer to a question Respondent posed to the class. There were fourteen (14) other children in that class, see Board Exh. 39, but there is no record evidence the Investigation Committee spoke to a single student in the 4th period Social Studies class other than A-5.

A-5 told the Investigation Committee other students actively participated in Mr. Levesque's question-and-answer instruction during 4th period class, but the Committee evinced no interest in speaking to any of them. According to what A-5 told the Committee, the "boys" in class also raised their hands to answer questions, but unlike A-5, they did not get rewarded with the massage Mr. Levesque purportedly gave to A-5 "every morning." Board Exh. 25 at 21. Eight (8) of the fifteen (15) students in the period 4 class were boys. Board Exhibit 39. As noted, not one of the boys in the class was interviewed.

But, of course, it could not have only been the boys who were paying attention. There is nothing in the hearing record indicating that A-5 was the only girl participating in class discussion. In fact, A-5 subsequently revised her testimony and admitted that girls in the 4th period Social Studies class did receive "pets" across their shoulder from Mr. Levesque when they gave correct responses. 5:150-51. But none were interviewed.

Indeed, the Committee inexplicably did not even interview S-9, a female 4th period classmate of A-5 who, A-5 insisted, also

received shoulder and back massages from Respondent. Board Exh. 25 at 21. That is a most perplexing omission. A-5 expressly informed the Committee that S-9 not only might have witnessed Respondent massage her, because they sat next to each other, but also that S-9 was another victim of Respondent's persistent touching of girls. Id.

Adding to that omission, is the Investigation Committee's lack of any curiosity about who else was sitting at A-5's desk cluster. Especially problematic is its failure to identify and question the two (2) students who sat directly across from A-5, who, one would expect, could not have missed the regular, perhaps daily, physical attention A-5 claims she received from Mr. Levesque, and the massages he purportedly gave to S-9.²³ Such an inquiry would have been a simple exercise. As noted, the Committee did not seek to consult the seating chart for the 4th period Social Studies class (or, the record shows, for any of Mr. Levesque's Fall 2022 Social Studies classes, 2:27-28), in order to identify students who would have had unobstructed opportunity to watch Respondent, and thus verify whether he "pet" his 4th period girl students during classroom Q&A.

My careful review of the hearing record persuades me the

²³At arbitration it was revealed that the student who sat directly across from A-5 during 4th period Social Studies class was S-36. See discussion, infra, at 102-3. S-36 testified she had no recollection of Mr. Levesque touching any students. 7:39. I have given weight to S-36's testimony. See discussion, infra, at 102-3.

Investigation Committee's lack of curiosity was evident, as well, in its investigation of the claims by A-1, the first student who came forward with touching allegations. A-1, in her interview by the Investigation Committee, reported that on two (2) occasions, while she and another student were seated on the classroom floor during period 7 Social Studies class doing unspecified "group work," Respondent "squeezed in between her and the other student." Board Exh. 25 at 11. A-1 told the Committee that when Respondent did this, "her shoulders and the side of her body [were] touching his." A-1 added that the "squeezing" by Respondent had happened twice, the last time being on approximately October 1, 2022 ("2 weeks ago"). She identified W-3 and W-6 as the students who were with her when the squeezing occurred.

W-3 told the Committee Respondent sat too close and touched her "all the time." Board Exh. 25 at 26. However, W-3 demonstrably lied during her interviews, see discussion, infra, at 113-14. In addition, W-3 added W-4, S-32 and S-33 to A-1's list students who witnessed her alleged "touching" encounters with Respondent during group work. Of the four (4) students identified by A-1 and W-3 as having first-hand knowledge of the "squeezing" incidents, three (3) of them, W-6, S-32 and S-33, were never interviewed, and the fourth, W-4, who did get called in for an interview, when asked by Ms. LaForgia, "did you ever

see [Respondent] ever invade other people's personal space?" answered, "no not really." Board Exh. 25 at 27.

Further, when the Committee learned from A-2 on October 19, 2022, that A-1, A-4 and another unidentified girl "made a rumor" that Respondent touched A-2's "butt," and started to spread that rumor, telling classmates "they think he is a pedophile," and also spread another rumor Respondent "dropped a pencil to see under a girl's skirt," and told other students Respondent "is a creep," Board Exh. 25 at 14, the Committee nevertheless decided against investigating the scope of the rumor allegations, notwithstanding the patent opportunity to explore whether students who were core participants in the Committee's investigation might not be reliable sources of information about Respondent.²⁴

The impact of gossip and rumors should not have been a minor concern, as A-2's allegations placed the Committee squarely on notice it might have been misguided in assuming none of the accusers and witnesses were friends. In fact, following A-2's revelation, there was reason to suspect the girls who were

²⁴In fact, Ms. LaForgia, at least as of the date of her arbitration testimony on August 14, 2024, believed A-2 was honest and had truthfully recalled and reported a conversation with other girls, which at least included A-1 and A-4, and possibly A-5, about those girls starting a rumor Mr. Levesque touched a girl's butt. 2:125-27. Ms. LaForgia testified she does not remember why there was no follow up, even with A-4, who made allegations of improper touching comparable to what the girls threatened to start a rumor about. 2:128-29

reporting they had been touched and massaged by Mr. Levesque may have influenced each other's reported experiences and possibly emboldened each other to fabricate events.²⁵

Following up on A-2's allegations, the Investigation Committee reasonably and fairly should have determined it was necessary to get corroboration from S-6, S-7 and S-8, the children who shared A-4's desk cluster, as well as from children facing A-4's desk cluster from other clusters of desks, who could not possibly have missed witnessing Respondent's alleged touching and rubbing of A-4's shoulders and arms, "almost every class" and "whenever he is by [her]." Board Exh. 25 at 19. However, even after learning about A-4's potential involvement with creating rumors, the Investigation Committee did not deem it necessary to obtain a seating chart for A-4's period 8 Social Studies class, even though that was the rational approach to finding out if there were any children who actually witnessed the alleged misconduct. In the record of this proceeding, there is no evidence that any did. It makes no sense that the Investigation Committee disdained performing an exhaustive search for witnesses, instead deciding, without justification, that no other students could have observed what A-4 described.

Also perplexing is that the Committee, upon learning from

²⁵There were conversations, for example, between A-1, A-2, A-4 and A-5 about what the girls might say in order to be transferred out of Mr. Levesque's Social Studies class. 5:148-49

A-2, only a few minutes after A-4's interview, that A-4 was possibly an originator of unfounded rumors about Respondent, did not immediately recall A-4 and continue her interview, in particular to ask her about her possible involvement in such rumors. Armed with the knowledge A-4 had been a participant in conversations about starting rumors about Mr. Levesque, the Committee might then have decided it was necessary to ask A-4 to identify classmates who would have seen Respondent rub her shoulders and arms when he was by her, almost every class. They did not.²⁶

DISCUSSION

Positions of the Parties

Position of the School District

Petitioner asserts Mr. Levesque "unquestionably engaged in unbecoming conduct warranting his dismissal from the District under N.J.S.A. 18A-6-10." School District Brief at 22. According to the District, its witnesses, in particular accusers A-1, A-3, A-4 and A-5, gave testimony "overwhelmingly" demonstrating that Respondent "irreversibly violated the public's trust and confidence in his ability to conduct the functions of a

²⁶These same concerns apply to A-1 and A-5, who also were identified as participants in the generation of rumors about Mr. Levesque, and they too were not called back by the Committee for additional questioning.

teacher in a safe and appropriate manner." Id. Consequently, according to the District, the only proper outcome is a determination Mr. Levesque is guilty of unbecoming conduct which shall result in his dismissal from tenured employment.

The School District insists its evidence proves Respondent touched all of the student witnesses in violation of applicable rules and regulations, and did so in ways which made them feel uncomfortable. This is especially so with respect to his physical contact with A-3 on her knee and her thigh, the District adds. Petitioner asserts I must credit the testimony of Students A-1, A-3, A-4 and A-5 that they each were victims of prohibited and inappropriate physical contact from Respondent, not only because their responses to questions, on both direct and cross-examination, were candid and direct, and also because their responses were consistent with their prior statements and with each other student witness's hearing testimony.

Moreover, the School District argues, Mr. Levesque "presented no evidence, either through his witnesses, documentary evidence, or his own testimony, that corroborated any suggestion or implication that the students fabricated what they told LaForgia, the IAIU investigator or the arbitrator when they testified." School District Brief at 13. Petitioner adds that Mr. Levesque, "in contrast to the student victims," was not credible and, in fact, "was often evasive." The District asserts

I must be cognizant of Respondent's "clear motivation to lie here, since it is his job that is on the line." Id. at 13-14.

The School District thus contends its evidence proves the allegations of A-3 that Respondent, during 9th period Social Studies class during approximately the first six (6) weeks of the 2022-2023 School Year, touched her on her knee, thigh and shoulders. A-3's allegations at arbitration, the District argues, align with the claims of improper touching by Respondent which are contained in Mr. Taflinski's IAIU Report. According to the District, A-3 credibly recalled that Mr. Levesque "massaged" her shoulders once or twice a week, touched her knee "about three times a week," and "touched her thigh about six times" from the start of the semester until he was placed on Administrative Leave on October 14, 2022. School District Br. at 4. Respondent's conduct made A-3 "feel scared and uncomfortable," as did his twice weekly comments on her appearance or outfits. Id. at 4-5.

Also demonstrated by the arbitration record, according to the District, is the allegation of student A-5 that Mr. Levesque, approximately every other day during period 4 Social Studies class, "caressed [her] shoulder and back," particularly when she answered a question correctly. School District Br. at 5 & fn. 21. Similarly, the District argues, student A-4 credibly described in her hearing testimony that Respondent, almost every school day during period 4 Social Studies, "would touch her arm

or shoulder." Id. Respondent "typically" did this when A-4 would ask for assistance with her Chromebook, the District adds. Id. at 5-6.

An additional basis for sustaining the instant Tenure Charges, according to the School District, is testimony of student A-1 that on two occasions "she was sitting on the floor working on her Chromebook [Mr. Levesque] sat next to her where his arms and shoulders touched her arms and shoulders," which she found to be "weird" and which made her "uncomfortable." School District Br. at 6.²⁷

With respect to A-2 and in apparent response to her arbitration testimony that Respondent did not "rub" her back or shoulder but rather "tapped" her shoulder or her back when he checked on her and asked "are you okay," when her head was down during class, 5:231, 238, 254-55, 262-63, notwithstanding entries in an Affidavit prepared by Ms. LaForgia, Board Exh. 37a, which A-2 signed on November 6, 2023, and which state Respondent told

²⁷The School District actually misstates A-1's allegations insofar as it seeks to create an impression of A-1 seated by herself on the floor, performing school work in isolation from other children, when Respondent allegedly sat next to her. In fact, A-1's testimony, as well as her prior statements to the Investigation Committee and Mr. Taflinski, described the "two occasions" as involving group work during which, on each occasion, she was seated adjacent to another student. Neither of the two (2) students who allegedly were with A-1 when the two (2) claimed touchings of her "arms and shoulders" occurred (W-3 and W-6) testified at arbitration, and one of those purported witnesses (W-6) was never interviewed by either the Investigation Committee or by IAIU Investigator Taflinski.

Ms. LaForgia otherwise (that it was a "rub") when A-2 was interviewed by the Committee on October 19, 2022, the School District argues A-2's testimony demonstrates Respondent initiated physical contact with the student. School District Br. at 7. The District asserts A-2's retraction of her previous sworn statement, Board Exh. 37a, 5:254-55, is not reliable evidence of what happened in her Social Studies class or of what other students might have said to her, but instead simply serves to expose her concern that testimony consistent with what she told the Investigation Committee might lead to Respondent's dismissal, which is a result she believes would be unfair. See School District Br. at 16.

In contrast to A-2, the District argues, the testimony of the "victims" of Respondent's unbecoming conduct, A-1, A-3, A-4 and A-5, was consistent, credible and devoid of any evidence they were motivated to fabricate their statements. School District Br. at 12-14. The District stresses that A-1, A-3, A-4 and A-5 were all good students with no disciplinary history. It insists "[t]hey answered questions on both direct and cross-examination candidly, directly and were not in any way evasive." It asserts "their testimony was consistent with their prior statements," and it argues Respondent failed to present any direct evidence to contradict their testimony.

According to the School District, this is a clear case

requiring the penalty of dismissal. It asserts that the appropriateness of dismissal under the facts established through the credible accounts by A-1, A-3, A-4 and A-5 of Respondent's persistent improper touching of female students was articulated in Dunckley v. Bd. of Educ. Of Rockaway Twp., Dkt. No. A-1152-16t1 (App. Div. Mar. 19, 2018) (unpublished), certif. den., 234 N.J. 20 (July 6, 2018), wherein the Appellate Division affirmed an arbitrator's decision to impose dismissal against a teacher the arbitrator determined was culpable of unbecoming conduct which included touching one complaining female student several times on her shoulder, arm and knee, and another on her knees and shoulders, while often asking the student during the touching if she was okay. Despite an IAIU conclusion the students were not subject to sexual abuse, as is also the case here, the arbitrator ruled the touching amounted to conduct unbecoming. The Appellate Division agreed, holding the arbitrator's findings were supported by the record, notwithstanding the IAIU's determination. The court upheld dismissal after noting the arbitrator's consideration of previous informal disciplinary measures taken against the teacher following similar allegations 5 years earlier, and after deciding the arbitrator properly considered the teacher's prior record as constituting a pattern of misconduct. See School District Br. At 24-26.

In short, the School District insists the documentary

evidence and testimony presented at hearing has established by a preponderance of the evidence that Mr. Levesque engaged in the acts underlying the Tenure Charges, and that he is beyond the point of rehabilitation to the extent necessary to eliminate the risk of danger to the District's students. It requests I find Respondent guilty of conduct unbecoming and dismiss him from his tenured employment.

Position of the Respondent

Respondent argues the Tenure Charges should be dismissed in their entirety and he should be exonerated. He insists the School District failed to prove the allegations asserted in the Charges, which are predominantly predicated on claims by student accusers A-1, A-3, A-4 and A-5 whose testimony was "rife with contradictions, inconsistencies, retractions, and alterations." Respondent Br. at 3. Respondent stresses that the student witnesses' allegations are "inherently unbelievable" insofar as the incidents they described and complained about purportedly occurred in full view of a classroom filled with students and, in some cases, other staff members, yet the District failed to call a single eyewitness to corroborate any of the accusers' claims. Respondent additionally notes the student witnesses' dishonesty in their denials of any involvement in the spreading of false rumors about him.

Respondent asserts that other allegations made by the School

District at the hearing did not constitute conduct unbecoming, and in many cases described "lighthearted" actions by Respondent intended to refocus students' attention. Other incidents brought up at the hearing, according to Respondent, consisted of alleged conduct which was not part of the Tenure Charges, and was based entirely on hearsay.

Respondent adds that the District's investigation into the students' allegations against him was woefully inadequate and clearly biased. Indeed, according to Respondent, the Investigation Committee pursued its inquiry with "tunnel vision," ignoring information fairly raising doubts about the student accusers' credibility, including evidence of an "unrelenting flood of gossip that permeated throughout the school, before, during, and after the investigation had concluded." Respondent Br. at 4.

Also ignored by the School District, according to Respondent, was his extremely impressive record as an educator, and his outstanding contributions to the School District and the community over the course of a 25-year career which should have prompted the full and fair investigation the School District denied him. He contends that the School District, by ignoring its duty to investigate, fashioned defamatory allegations entirely inconsistent with his character.

Indeed, Respondent argues, the School District believed the

student accusers without ever attempting to test their credibility, such as by identifying and speaking to classmates of the accusers whose assigned seats gave them consistent daily opportunity to observe his alleged misconduct, and yet it disbelieved his professional co-workers, Ms. Castellini, the Special Education Teacher for periods 4 and 9, and Ms. Marsico, the one-on-one Aide assigned to S-47, who each told the Investigation Committee that they never witnessed Respondent make the physical contact described in the charges. Respondent points out that the Investigation Committee, rather than expand the investigation after speaking with Ms. Castellini and Ms. Marsico, such as by identifying student witnesses whose assigned seats in class would have given them opportunity to observe improper conduct alleged by most of the accusers, instead disregarded the staff members' observations, and even discredited Ms. Castellini as being a liar simply because she told them she had seen none of the behaviors alleged, and experienced him as a passionate teacher to whom she would send her own children. Respondent argues,

It was clear that Ms. Androulakis, Dr. Calderon, and especially LaForgia were dead set on their theory of the case - that Mr. Levesque touched or interacted with female students in an inappropriate manner, and that any incriminating information they gathered (no matter how flimsy) was true, while anything presented to them of an exculpatory nature was rejected, explained away or blindly disregarded.

Respondent Br. at 57. According to Mr. Levesque, the

Investigation Committee presumed him guilty from the start, and it consequently decided it was not necessary to follow up on any of A-2's claims several of the student accusers spoke openly about inventing allegations and starting rumors about him. So, too, the Committee was so razor focused on Mr. Levesque's presumed guilt, they accepted at face value the "absurd and utterly impossible allegations" leveled by A-3.

Respondent summarized evidence which he argues substantiates the Committee's tunnel vision and consequently flawed investigation:

With respect to A-1, Respondent argues, inter alia,:

- A-1 during cross examination changed the material components of her allegations against him. Initially telling the Committee that Mr. Levesque "squeezed" between her and another student, and repeated that allegation on direct examination. On cross-examination, she alleged there was one student seated next to her, and Mr. Levesque then sat on her other side. Respondent Br. at 58-59.
- A-1 told Mr. Taflinski, the IAIU Investigator that "Mr. Levesque would also put his hand on her leg," but failed to disclose this "seemingly extremely important detail to LaForgia," and at arbitration testified that Respondent never actually touched her with his hand. Respondent Br. at 59-60.
- A-1 identified W-4 as a witness to the inappropriate "squeezing" she described to the Investigation Committee, but W-4, when questioned by the Committee denied witnessing him invade any student's personal space. Respondent Br. at 60.
- A-1 gave false testimony when she repeatedly denied hearing rumors about Mr. Levesque during a field trip described by A-2 or at any time prior to her October 13, 2022, meeting with Ms. Androulakis, and she was

untruthful when she denied discussing allegations surrounding Respondent with any students prior to and after she reported him.

- ▶ Her testimony was contradicted by Dr. Calderon who testified that two of A-1's friends encouraged her to report Mr. Levesque.
- ▶ It was also contradicted by A-5, who conceded she had heard rumors about Mr. Levesque from other students, including A-1.
- ▶ It was contradicted by A-3, who testified "literally everyone" was spreading the rumor that Respondent touched A-2's butt during the field trip and "you'll hear one gossip from 15 different girls on the same day."
- ▶ It was contradicted by A-2, who testified credibly that A-1 was one of the students she was with when the rumor of Mr. Levesque touching A-2's butt first circulated.
- ▶ A-2 identified A-1 as being one of the students responsible for rumors around the school that Respondent was weird and had a crush on her, and was the person who reported incidents involving A-2 which A-2 did not think were serious.
- ▶ A-2 reported she learned from A-1 certain rumors A-1 had said she learned about from her brother, a former student of Respondent.

Respondent Brief at 60-61. Thus, Respondent argues, A-1's credibility is suspect. He asserts the information she gave investigators was inconsistent and could not even be verified by W-4, a student she identified as an eye witness. According to Respondent, A-1's prior statements and her testimony should be evaluated under the "false in one, false in all" principle, discussed in State v. Ernst, 32 N.J. 567, 583 (1960), that a witness who willfully falsifies one matter is not credible on any

matter which is not corroborated.²⁸

With respect to A-3, Respondent argues that her "allegations against him were so unimaginably absurd that they must be dismissed offhand under the 'inherently incredible' standard of Congleton [v. Pura-Tex Stone Corp., 53 N.J. Super. 282,287 (App. Div. 1958)]." According to Respondent, A-3's inherently incredible assertions include,

- The impossibility Respondent could have massaged A-3's shoulders every day while standing behind her and whispering in her ear in full view of the entire class, without anyone noticing.
- The impossibility Respondent could have rubbed A-3's thigh or knee, or indeed any part of her leg, three (3) or more times per week (for six weeks), while kneeling beside her, directly in view of the students and Ms. Marsico, the one-on-one aide situated in A-3's cluster of desks, without them, or anyone else, noticing.

In connection with the foregoing, Respondent points out, inter alia,

- ▶ There was no eyewitness testimony presented at arbitration to corroborate A-3's massaging, touching and rubbing allegations.
- ▶ The classroom layout, which featured desks tightly grouped together and facing each other in clusters made it virtually impossible for incidents of the nature described by A-3 to have occurred

²⁸In the context of jury instructions, New Jersey law recognizes the "falsus in uno, falsus in omnibus" principle as a tool for juries to assess witness credibility. However, it is not a mandatory. The instruction, however, is not mandatory, but simply allows jurors to disregard testimony from witnesses who have intentionally lied about important facts. This principle grants jurors discretion to determine what portions of a witnesses testimony, if any, they find credible. See, e.g., New Jersey v. Fleckenstein, 60 N.J. Super. 399, 408 (1960).

unnoticed. It is also implausible a teacher would be brazen enough to commit the alleged touching of A-3 in such a close and constantly monitored space.

- ▶ While Respondent, according to A-3, purportedly was standing right behind her, massaging her shoulders and leaning into one of her ears, whispering comments, Ms. Castellini was standing at the front of the classroom, at positions (identified by A-3 on Respondent Exh. 1) where she had a direct, close view of Respondent and A-3. Yet, Ms. Castellini denied witnessing anything of the sort.²⁹
- ▶ So, too, Ms. Marsico, the one-on-one aide for S-47, a student in Respondent's 9th period Social Studies class who directly faced A-3 from a mere few feet away, on the opposite side of the desk cluster to which each was assigned, denied witnessing any physical contact between Mr. Levesque and A-3. Respondent argues "it would have been virtually impossible for the alleged contact between him and A-3 to have occurred without [Ms. Marsico] observing it," given that her primary duty was to either assist S-47 directly at his desk, or if she was elsewhere in the classroom, constantly to monitor him.
- ▶ Indeed, Respondent points out, Ms. LaForgia conceded it is "a little bit perplexing that there wasn't a single person that corroborated her side of the story." 2:172.

²⁹Ms. LaForgia's conclusion Ms. Castellini was lying when she told the Committee she never saw Respondent do anything improper, like touch, rub or massage A-3, or give her unusual attention, an assessment Ms. LaForgia shared with Dr. Calderon after the Committee interviewed Ms. Castellini on October 20, 2022 ("We (Ms. LaForgia and Dr. Calderon) looked at each other and said, 'she's lying.'" 1:165), corroborates Respondent's insistence that Ms. Castellini would have had an unimpeded view of his actions had he been standing behind A-3 and massaging her shoulders, or kneeling against her leg, as the student has alleged. As discussed, infra, at 87-88, I found Ms. Castellini to be candid and honest, and sincerely caring about her students' welfare.

- Respondent asserts A-3's testimony was inconsistent on facts which are central to her allegations. Thus, Respondent points out, A-3 initially testified on direct that Respondent massaged her shoulders once or twice a week. 5:11. Later, on cross-examination, she asserted he rubbed her shoulders "every day." 5:62.³⁰
- Respondent additionally argues that A-3's testimony should be disregarded because she gave an unbelievable explanation of why the female student who sat immediately to her right neither observed Respondent hovering over A-3 while massaging her shoulders and whispering into her ear, nor observed him kneeling next to A-3 and rubbing various parts of her left leg. Respondent recalls A-3's testimony that the student next to her, S-10, was tuned into games she was playing on her Chromebook while he performed the alleged massages of A-3. Respondent points out he strictly enforced the rule against playing computer games during class time, he nevertheless made an exception for S-10 because he was "too into" massaging or caressing A-3. 5:71-75 (A-3's accounts of what allegedly transpired).
- "Even more absurdly," according to Respondent, A-3 testified she would tap S-10 on her shoulder to get her attention when Respondent was allegedly rubbing her leg, but her friend would not respond and never asked A-3 why she had tapped her on the shoulder. 5:100-101.
- Respondent points out A-3's acknowledgment anyone coming to the classroom door, which had a window, or looking through the classroom's row of outside windows, would have been able to observe His's alleged conduct.
- According to Respondent, A-3's credibility is "severely diminished" on account of her participation in the spreading of rumors about Him, and in discussions with other students, both before, during and after the investigation, about his alleged misconduct. These conversations included one with her sister, who was in Respondent's Social Studies class two (2) years earlier, about touching a girl who was wearing a skirt, 5:89, as well as her participation in the circulation

³⁰A-3 told the Investigations Committee that Respondent touched her shoulders "most classes" and "all the time." Board Exh. 25 at 16-18. She told IAIU Investigator Mr. Levesque massaged her shoulders "almost every class."

of false rumors about Mr. Levesque touching girls, which were spread during the field trip that preceded the Investigation. 5:76-80.

In short, Respondent argues the above examples, along with others, are grounds to discredit A-3's allegations and reject her testimony.

Similarly, Respondent argues, A-4's testimony was not credible and her account should likewise be rejected. Respondent offers the following examples:

- A-4 lied about her participation in rumors about Mr. Levesque. Indeed, she testified that the only thing she heard other students talk about was that Mr. Levesque "was going to leave, and that he was getting fired." She added, "that's as much as I remember." 5:203.
- ▶ Respondent insists that is false testimony, arguing that A-2 credibly named A-4 as one of the originators of the rumor Respondent had touched her butt. Respondent notes Ms. LaForgia's agreement that if A-4 did participate in starting a rumor about him, it would raise questions about the truthfulness of her allegations. 2:126-29.³¹
- ▶ Respondent points out A-4's testimony the only conversation she recalls ever having about him with anyone was the conversation she had with A-2 on September 9, 2024, the day the two girls ran into each other and learned they each would be testifying on September 10, 2024. According to A-4, she and A-2 did not speak about any matters of substance. Just the fact they each had been called to testify. 5:205. A-4 expressly testified that when she and A-2 ran into each other the day before their arbitration testimony, Mr. Levesque was not discussed "at all." 5:215. A-2, however, recalls that she and A-4

³¹Yet Ms. LaForgia and the Committee never followed up with A-4 about A-2 allegation A-4 was involved in starting a rumor to harm Mr. Levesque. 2:128-29.

specifically discussed "what we think should happen," and A-4 said she thinks "he should get fired." Respondent argues "[t]here is no chance that A-4 would have forgotten this conversation from just a day before the hearing, demonstrating that her testimony on this issue was false."

- ▶ Respondent adds that A-2 credibly revealed that A-4, a close friend, never told her he had touched her inappropriately, even when they were debating what should be the outcome of this hearing. 5:280-82. Indeed, Respondent stresses, A-2 believes the reason A-4 would like to see him "fired" is because she thinks he is a "creep" on account of the rumors A-4 had heard. 5:280-81.
- ▶ Further, in challenging A-4's credibility, Respondent asserts:
 - A-4 told Ms. LaForgia she had conversations about Mr. Levesque with other students in October 2022 who told her she was "overreacting," 1:146, but at arbitration she denied recalling that she ever had such conversations, 5:191, but she then later unwittingly admitted to remembering having such conversations when she testified she could not remember the name of the student who had told her she was overreacting. 5:208-9.
 - Respondent argues that additional doubt about A-4's credibility is her testimony, 5:183, that when he touched her shoulder and rubbed her arm, 5:180, he also would put his hand on her hand. 5:183. Respondent points out that A-4 never previously alleged that he had touched her hand with his hand. Cf. Board Exh. 25 at 19-20 (A-4 told the Committee, "he will touch my shoulder and rub down my arm," and when asked if she had anything to add, she answered, "no."); see also, Taflinski IAIU Report at 7 ("[Respondent] would place his hands on [A-4's] shoulders and rub them while asking her how she is doing," and "[Mr. Levesque] never touched her knee or anywhere else on the body.")

Respondent argues that A-4's newly minted claim, invented at arbitration, that he would touch her hand after he rubbed her

arm, betrays her readiness to make up facts and embellish her already false story. Respondent insists that A-4's testimony was "rife with lies, contradictions, inconsistencies [and] changed material components of her story." He stresses the fact her allegations have no corroboration from any student in her class, despite the fact his purported misconduct occurred daily and in full view of the entire Period 8 Social Studies class. He insists, therefore, A-4's testimony must be rejected and any allegations in the Tenure Charges based on her claims must be dismissed.

With respect to A-5, who was a student in Mr. Levesque's 4th period Social Studies class in the Fall 2022 semester, Respondent contends her allegations are "discredited by her own ever-evolving, fantastical testimony." Respondent Br. at 70. He points out A-5's initial testimony that he rubbed her shoulder and back "every other day," 5:113, and that he did "the same shoulder rubbing" to S-9, who sat next to A-5 at their shared desk cluster. 5:114. (Respondent notes that S-9 was never questioned by IAIU Investigator Taflinski or by the District's Investigation Committee, and thus did not corroborate A-5's testimony at arbitration) Respondent Br. At 71.³² Then,

³²Ms. LaForgia asked A-5 on October 19, 2022, "does it happen with other girls," and A-5 answered, "I see it with S-9 sometimes but he does it to me most of the time." Board Exh. 25 at 21. On October 21, 2022, when A-5 was interviewed by Mr. Taflinski, she made no mention of S-9 and told the IAIU Investigator that "she has never seen Mr. Levesque doing anything

Respondent adds, A-5, in mid-hearing testimony, altered her story, and for the first time ever alleged that Respondent would "pet" any female students who answered his questions correctly, and that he did so in every class. This, allegedly was in contrast to his treatment of the boys, whose only reward was Respondent telling them, "good job." 5:51.

Still later in A-5's testimony, she changed her story for a third time, Respondent argues. Indeed, as Mr. Levesque points out, A-5 later admitted, contrary to her allegations just minutes earlier, she did not ever see him "pet" any female student who correctly answered a question. She had only heard of that from other girls, whom she identified as A-2 or A-4, students who, incidentally, were not in her period 4 class.³³

In short, Respondent argues there is no further analysis necessary to dismiss all of A-5's allegations, given the ease with which she embellishes, changes and even fabricates events.³⁴

like that to other female students before." Joint Exh. 2, Report at p. 7.

³³A-5 thus unwittingly impeached the credibility of A-4, who not only insisted the sole student with whom she ever spoke about this case was A-2, (and only with respect to the September 10th hearing date), 5:214, but also specifically denied having been friends with A-5 in 6th grade. 5:206-7.

³⁴Respondent nevertheless asks that I continue to assess A-5's credibility with the following in mind:

- A-5's "ridiculous" and implausible story she reported being massaged by Respondent to Ms. Androulakis three (3) weeks before she was called in for an interview by the Investigation Committee. 5:122-23.

According to Respondent, there is no doubt A-5 was untruthful from the beginning of her participation in the investigations through her arbitration testimony, and the allegations in the Tenure Charges pertaining to A-5 should be dismissed for lack of proof.

Respondent insists that the District failed to prove any of the allegations reported by A-1, A-3, A-4 and A-5, and since the claims asserted by those four (4) students are the only ones which potentially could have constituted conduct unbecoming, the Tenure Charges in their entirety must be dismissed with prejudice. Moreover, according to Respondent, apart from the insufficiency of the District's evidentiary proofs, I should consider the following additional factors:

Respondent asserts the unmonitored rumors and gossip about him generated misinformation and unjustified suspicions about him, and ended up severely compromising the integrity of the District's investigation. Unexamined by the District prior to bringing the instant charges, Respondent adds, is whether the persistent and unfiltered gossip about Him among the Middle School 6th graders, particularly its likely origins in a popular friend group in which all the student witnesses participated,

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- A-5's dishonesty about her active participation in the rumor mill which generated grossly false information about Mr. Levesque which made other children unjustifiably suspicious about him.

tainted the integrity of the students' reports. The rumor mill "clearly predisposed the students to believing [Respondent] was a 'creep,'" he argues, and it was never explored, or possibly ever considered, by the District whether the allure of notoriety and the perception of concomitant acceptance by the "popular" group might motivate certain 6th graders to bring false, pernicious and sensational claims against a teacher their fellow students and even their elder siblings were gossiping about and calling a "creep."

Respondent asserts the failure of the District's case cannot be blamed solely on the unconstrained rumor mill. Respondent argues the Investigation Committee failed to make an unbiased and impartial inquiry, and instead allowed, and possibly encouraged, the stream of false student reports by failing to even consider the possibility their allegations were not true. Thus, Respondent argues, the investigation was conducted with "tunnel vision," highlighted by the Investigation Committee's failure to entertain the possibility the student accusers knew each other and had engaged in conversations about how to get transferred from his class, or even to "get him fired."

So, too, the Committee deemed Ms. Castellini, a long time educator in the District with an impeccable reputation, to be a liar, simply because she told them she had not seen any evidence of A-3's extraordinary claim Mr. Levesque massaged and caressed

her every day in full view of her classmates and teachers. Similarly, Respondent argues, the Investigation Committee "lazily" explained away Ms. Marsico's testimony she had not witnessed any of the daily misconduct by him which, according to A-3, would have taken place under Ms. Marsico's nose, by simply concluding, without any evidentiary basis, that Ms. Marsico routinely and regularly was leaving the room, despite her obligation to be present as the one-on-one aide for a student who sat directly across from A-3.

The Committee's bias against Respondent is evident from Ms. LaForgia's initial involvement in the investigation, Respondent argues. This bias is apparent, Respondent argues, from Ms. LaForgia's false report to IAIU that he had a history 2017 and 2018 of touching female students on their shoulders and legs. That same bias, Respondent argues, accounts for the Committee's cavalier dismissal of A-2's report that A-1 and A-4 had started a false rumor that he had touched A-2's butt.

Moreover, Respondent adds, the only students who were questioned during the investigation besides the accusers themselves, were a handful of girls, four (4) to be exact, who were named by the accusers. No students were selected for questioning based upon where they sat in the classroom, or alternatively at random. According to Respondent, a "bevy of students, at least thirty- three (33) identified in J-1 with the

notation "'S-___,'" were identified as eyewitnesses, but were never questioned.

Further, Respondent argues, absurd claims, notably those of A-3, were blindly accepted; inconsistencies in the accusers' and interviewed witnesses' statements were never reconciled, and no eye-witnesses were presented to substantiate any of the accusers' allegations, despite the fact all of the allegations upon which the Tenure Charges are based purportedly occurred in the presence of over a dozen people.

Further, according to Respondent, the Investigation Committee failed properly to memorialize the student accusers' (and the named witnesses') interviews, electing to employ the "cumbersome" Google Docs speech to text application, which was manipulated by Dr. Calderon. Similarly, Respondent adds, Ms. LaForgia sought to rehabilitate those unreliable notes by drafting affidavits based on the notes, which were presented to the children for signature under threat of punishment in an intimidating setting. Respondent points out A-2's testimony she signed what she knew was a false affidavit because of the pressure she felt to be compliant.

Respondent adds that additional allegations made in witness testimony must be dismissed because they were not sufficiently serious to constitute conduct unbecoming, were not established through non-hearsay testimony and were not expressly incorporated

into the charges. In connection with the foregoing, Respondent asserts that any incidents itemized in the charges as being based on reports exclusively from students identified as "W-__" or "S-__" must be dismissed because they are not supported by firsthand witness testimony or other direct evidence. Respondent asserts that under a "plethora of tenure arbitration awards," Respondent Br. at 78 (and cases cited therein), Petitioner's burden in a tenure hearing is not met if the sole evidence presented is uncorroborated hearsay.

So, too, "ancillary claims," such as the allegation Respondent improperly asked A-2 to "knight" him by tapping him on the shoulder while he kneeled as a playful way to "forgive him" for trying to teach class while she chatted with her friends, was understood by A-2 to be in jest. Importantly, A-2 learned from the exercise that she should pay attention during class and not interrupt instruction by socializing with her friends.

Respondent asserts that the occasion on which he tapped A-2 on the shoulder to check if she was okay when she put her head down on her desk was an appropriate and discreet way to check on the welfare of a child. A-2 testified that she, in fact, thought that it was "a good thing" that Mr. Levesque checked on her.

Other incidents elicited through testimony were "quite benign," Respondent argues. Thus, Ms. Marsico recalled that when Mr. Levesque gave male and female students "high fives" for

correctly answering a question, his enthusiasm was well received by the students. She added that on one undated occasion, she saw Respondent pat a male student, S-1, on the back for getting an answer right.³⁵

These incidents are not charged as misconduct, Respondent argues, and the School District's attempt to give them life simply through hearing testimony is a denial of his due process rights, which at a bare minimum requires notice and "an opportunity to be heard at a meaningful time and in a meaningful manner." Doe v. Poritz, 142 N.J. 1, 106 (1995). Respondent adds that "[t]he purpose of notice . . . is to apprise an affected individual of, and permit adequate preparation for, an impending 'hearing' which may affect their legally protected interests." Memphis Light, Gas & Water Div. V. Craft, 436 U.S. 1, 14 (1978).

Regarding Count Three of the Tenure Charges, Respondent asserts it too must be dismissed, with prejudice, because it is predicated on violations of policies, rules, and standards of ethics which are beyond the scope of the statutorily mandated

³⁵In para. 50 of the Tenure Charges, the School District alleges that Ms. Marsico saw a male student, S-1 receive a pat on the back from Mr. Levesque "and not liking it," after the student provided a correct answer. She recalled there were other students to whom Respondent gave pats when they too gave strong answers, but except for S-1, she did not recall who they were. Setting aside the absence of specificity in the charge, including the fact the allegation does not recite any dates, what Ms. Marsico actually testified was that she could understand, from her experience, that a student might not like getting a pat on the back. 3:148-50. She acknowledged she does not know if S-1, or any other student, disliked the pat. Id.

tenure charge process. Respondent points out the stipulated issue in this proceeding is whether he engaged in "conduct unbecoming under N.J.S.A. 18A:6-10 et seq." 1:14. He argues, therefore, that violations of policies, rules or standards of ethics are not within the issues to be decided under that stipulation. Nor, he adds, are purported violations of the HIB laws, which in any case are part of a separate legal action on appeal before the Office of Administrative Law.

Finally, Respondent adds that even if he is found guilty of committing conduct unbecoming, mitigating evidence weighs heavily against the imposition of severe discipline. He asserts he is a veteran social studies teacher who provided exemplary educational services to the students of Westwood for 25 years. He has a single reprimand letter and no history of major discipline. So, too, as documented by multiple letters in the hearing record, he is highly regarded by parents of current and former students, by former students themselves, and by community residents for his contributions to the school and the greater Westwood community.

Indeed, Mr. Levesque points out, Ms. Castellini and Mr. Hackbarth, another long-time colleague, raved about his energy and enthusiasm as a teacher. Ms. Castellini described him as a "great educator [who] very much care[s] for his students, very vibrant, very alive in our class." 4:129. Mr. Hackbarth described Respondent as "a perpetual encourager [who] wants [his

students] to do their best at all times."

OPINION

Based upon my careful and detailed review of the hearing evidence, I find the arbitration record fails to prove Respondent engaged in the conduct alleged in the Tenure Charges filed on February 16, 2024. The School District presented the testimony of students A-1, A-2, A-3, A-4 and A-5 in support of the allegations of conduct unbecoming stated in the Tenure Charges. For the reasons explained below, I do not credit the testimony of A-1, A-3, A-4 and A-5, as my careful review and analysis of the hearing record, consisting primarily of the transcribed arbitration testimony, the Investigation Committee's notes, and the IAIU Investigator's Report, persuades me the allegations in the Tenure Charges of improper touching, massaging, rubbing, caressing, grabbing, squeezing, and of any similar or related behavior by or from Respondent (collectively, "improper physical contact"), as well as of comments, questions, stares, looks, grins and any other, similar or related behavior at/or towards students (collectively, "prohibited treatment") by and/or from Respondent made by the accuser students are not credible.³⁶ So, too, to the extent the Tenure Charges may be read as alleging

³⁶A-2 did not allege in her hearing testimony any conduct by Mr. Levesque which constitutes conduct unbecoming. See, discussion, infra at 108-111.

conduct unbecoming in connection with improper physical contact and/or prohibited treatment of or witnessed by non-testifying students W-1, W-2, W-3 and W-4 (collectively, the "witness students"), those specifications, I find, are unsubstantiated. Accordingly, the charges of conduct unbecoming based on the allegations in Charge No. 1 are dismissed. Further, to the extent the specifications in Charge No. 3 may be read as a charge of conduct unbecoming, Charge No. 3 also is dismissed, for it is based on the same factual allegations as Charge No. 1.³⁷

A-1

A-1 testified at arbitration that during the first six (6) weeks or so of the Fall 2022 semester, when she was in Mr. Levesque's 7th period Social Studies class, Respondent assigned the students partners for group assignments, and the students had the option to work together on the floor. 6:78-79. A-1 testified that on the first two (2) occasions of group work, Respondent joined her and her partner, and sat down "very close" to A-1 "so that his arm touched [her] arm and his leg touched [her] leg." 6:78.³⁸

³⁷Respondent correctly argues that the School District's claim in Charge No. 3 that the actions and statements by Respondent alleged in Charge No. 1 constituted violations of policies, rules or standards of ethics, or of HIB laws, are not within the issues to be decided under the parties' stipulation.

³⁸After some initial confusion, A-1 clarified that there were two separate incidents before she went to speak to Ms. LaForgia. 6:82-83. It was only after the second incident she

Initially, A-1 did not remember who her partner was the first "squeeze" incident, or if her partner sat to her right or her left. 6:83. Plainly, therefore, she does not remember where Respondent sat, whether on her right side or her left. However, A-1 does recall that W-3 was her partner the second incident. 6:83-84. W-3 sat to A-1's right and when Mr. Levesque joined them, he sat in an open space on her left. Id. at 84. Indeed, when Respondent, on the second occasion, sat down next to A-1, there was no person and no wall to his left. 6:84-85. In short, according to A-1's hearing testimony, Mr. Levesque did not squeeze into any small spaces next to her, contrary to what is alleged in the Tenure Charges.

A-1's arbitration testimony thus contradicts the core allegation she made to the Investigation Committee, specifically that Respondent "squeezed in between her and the other student." Board Exh. 25 at 11. The Tenure Charges allege that A-1 "explained to LaForgia, Dr. Calderon and Ms. Androulakis that when she and other students sat on the floor for group work, Levesque squeezes into a very small space next to her. . . . A-1 did not think there was any need for that because there was plenty of room on the other side of [A-1] where he could sit without touching her." Tenure Charges, Para. 8 (emph. Supp.).

recalls she sat up against a wall during group work on the floor, 6:85, and did so with her partner on her other side, so that Mr. Levesque could not sit next to her. 6:83.

According to A-1's hearing testimony, however, Respondent on each occasion sat on the "other side of A-1," where there was no other student, no wall, and where there was plenty of room. See 6:84-85, 95-100. A-1, in fact, acknowledged that Mr. Levesque did not "squeez[e] in anywhere." 6:100. This testimony was a substantial departure from para. 8 of the Tenure Charges, and effectively a retraction of what A-1 told the Investigation Committee.

On cross examination, A-1 recalled that W-6 (who was never interviewed and did not testify) was her partner for the first of the two "squeezing" incidents alleged in para. 8 of the Charges. 6:95. A-1 does not remember where Respondent sat, except she was very clear that Mr. Levesque did not squeeze in between her and W-6. 6:97. Also, there was no wall. 6:95. Regarding the second incident, A-1 remembers she sat on the floor next to her partner, W-3, who sat to A-1's right. 6:83-85. Mr. Levesque sat to her left, but not next to a wall. Id. Thus, Mr. Levesque sat where there was neither a wall nor another person, and consequently did not actually squeeze into "a very small space," as alleged in the Tenure Charges. Indeed, he did not squeeze between A-1 and W-6, 6:97, nor later did he squeeze between A-1 and W-3. 6:98. He never sat between two (2) students. 6:99.

A-1, on both direct and cross-examination, simply was unable to substantiate the core allegation she made to the Investigation

Committee, and which was repeated in para. 8 of the Tenure Charges, that Respondent invasively "squeezed" into "a very small space" between her and either another student or a wall. I can allow that A-1 might have forgotten some of the minor details of events she experienced two years prior when she was in 6th grade, but it is not believable she would forget "the very small space" into which Respondent allegedly squeezed, as that was the alleged experience which precipitated A-1's complaint to the Guidance Counselor. When she was asked on cross-examination, "what was [Respondent] actually squeezing in between?", A-1 admitted, "I don't remember." 6:100. Thus, A-1's own testimony refutes the allegation in para. 8 of the Tenure Charges that Respondent "squeezes into a very small space next to her."

I additionally conclude, based on A-1's arbitration testimony, that Respondent did not actually touch her when he sat next to her and her partner during either of the two group projects about which A-1 testified. When Respondent's attorney asked, "[s]o was he maybe not squeezing in anywhere, and it was just that he sat next to you and was a little bit too close?", A-1 replied, "I believe so." She later testified, Respondent "was extremely close for no reason." 6:102. Erasing any ambiguity in her testimony, she still later testified when asked if Respondent simply was having difficulty seeing her Chromebook,

No, I think he just - like, I don't' know, he was, like, really close. I feel like even if

he couldn't see, he could have sat like a little bit like other ways, it was like real close, that it was like very weird.

6:103.

I thus find A-1 was not truthful when she told the Investigation Committee on October 14, 2022, that Respondent squeezed into a small space next to her and touched her arms, legs and/or the side of her body with his. A-1 admitted at arbitration that her statements to the Investigation Committee upon which the allegations in the Tenure Charges are based, were not accurate. It is believable A-1 felt very uncomfortable if Mr. Levesque sat close to her in order to engage in discussion with A-1's study group or to read what was on her Chromebook, which is the scenario she recalls, 6:101, but I do not believe her claim that he touched her body with his.

The School District asks, why would she make up such a story? I do not know. If I am persuaded a witness has not been truthful, I am not required to know his or her motive to exaggerate or lie. It could have been as simple as the fact she wanting to transfer into a different class because she did not like Mr. Levesque, or she thought he was too hard a grader, or she wanted to be with friends in a different class.

More probative on the question of whether A-1 has been dishonest is the fact A-1 told Mr. Taflinski on October 21, 2022, only one week after she was interviewed by Ms. LaForgia and Dr.

Calderon, "that Mr. Levesque would also put his hand on her leg." Joint Exh. 2, Report at 6. That is an alarming detail which, I am persuaded, A-1 would have told Ms. LaForgia and Dr. Calderon, if it was true. But she did not share that information with the Committee, although it is precisely the kind of detail which a child would not forget.

Even in her arbitration testimony, A-1 made no mention that Mr. Levesque ever put his hand on her leg. On the contrary, when she was asked if Respondent ever touched her with his hand, she answered, "I don't believe so." I conclude it did not happen, and I am persuaded A-1's report to the IAIU investigator that Respondent had put his hand on her leg was an embellishment. How might I fairly credit A-1's allegations to the Investigation Committee were truthful, if a week later she decided she needed to supplement her prior statement with even more serious allegations?

Although W-3 did not testify, I have still considered whether her statement to the Investigation Committee on October 14, 2022, that Respondent's "arms are touching A-1 all the time," was credible. I find it was not. When W-3 was asked by Ms. LaForgia how many times this happened, she answered, "at least 5 times." Board Exh. 25 at 26. Her statement was inconsistent with A-1's recollection there were only two occasions Mr. Levesque joined A-1 and her partner on the floor. W-3 also told

the Committee that Respondent sat especially close to W-4. Id. W-4, however, denied ever seeing Mr. Levesque invade other people's "personal space," and stated she "is fine" remaining in his class. Id. at 27. W-4 did not testify at arbitration.

Moreover, when W-3 was interviewed by Mr. Taflinski on October 21, 2022, a week after she met with the Investigation Committee, she made no mention of Mr. Levesque making any physical contact with her or A-1 during group work in Social Studies class, although those allegations had dominated her interview by the Investigation Committee a week earlier. Rather, during her interview on October 21, 2022, with the IAIU Investigator, W-3 made a host of brand new allegations she did not even hint at when she spoke to Ms. LaForgia and Dr. Calderon on October 14, 2022. Just like A-1 did when she told Mr. Taflinski, without ever having told the Committee, that Respondent had placed his hand on her leg, W-3 told the IAIU Investigator about very serious behavior by Respondent that she never previously mentioned.

W-3 told Mr. Taflinski that three weeks earlier she saw Mr. Levesque "for no reason" come up to A-1 and massage her shoulders. W-3 told Mr. Taflinski this had happened two (2) times. W-3 stated that she had never seen Mr. Levesque get down on his knees or touch any other student anywhere on their body, and, directly refuting the claim she previously made to the

Committee on October 14, 2022, that she had witnessed Respondent touch A-1 with his arms, legs or body during group work), W-3 told Mr. Taflinski, specifically as to A-1, that she has never seen Respondent touch or massage A-1 anywhere on her body other than her shoulders. Joint Exh. 2, Report at 8. A-1, however, just fifteen (15) minutes earlier, had told Mr. Taflinski that Respondent had never touched or massaged her shoulders. Id. at 11.

In the background of these shifting allegations is A-2's revelation to the Investigation Committee on October 19, 2022, that a group of girls which included A-1 (as well as A-4, and possibly A-5) had gossiped during a field trip about Mr. Levesque, and spoke openly about starting a rumor he touched A-2's butt. A-1 testified that she has no knowledge of anyone talking about Respondent during the field trip. 6:133-34.

I am persuaded A-1 lied at arbitration about her involvement in gossip about Respondent, and did so to conceal information which would impeach her credibility and to hide the relationship between the subject matter of that gossip (the making of false claims about Mr. Levesque touching girls inappropriately) and the newly minted allegations both she and W-3 gave to Mr. Taflinski on October 21, 2022. Ms. LaForgia herself conceded the "butt rumor" information provided by A-2 appeared truthful. 2:126. I likewise find that A-2 was a believable witness whose testimony

impeaches A-1's credibility.

Ms. LaForgia offered that she nevertheless credited A-1's allegations about Mr. Levesque's conduct during period 7 group work because it "was verified by two witnesses." 2:189. Those "two witnesses" included W-3, who demonstrably lied to Mr. Taflinski on October 21, 2022, when she falsely asserted she had twice witnessed Respondent massaging A-1's shoulders. The other witness who Ms. LaForgia cited as giving support to A-1's allegations that Mr. Levesque had made physical contact with her during group study was W-4 who, as noted, denied in her interview by the Committee that she ever witnessed him "invade" anyone's "personal space."

In sum, I find A-1 was not honest in the statements she gave the Investigation Committee and the IAIU Investigator, which are the foundation for the allegations in the Tenure Charges pertaining to A-1. Her arbitration testimony demonstrated she has no present memory of being "squeezed" or touched by Mr. Levesque during group work September or October 2022, and her demonstrated lack of veracity, discussed above, persuades me of her capacity when she was in 6th grade to fabricate accusations, even serious ones like those at issue here, when it served a purpose as benign as getting a transfer into a different class. A-1's shifting accounts of various events, discussed herein, persuades me I cannot rely on any of her allegations against Mr.

Levesque as being truthful and reliable.

For the reasons stated herein, the Specifications in the Tenure Charges related to allegations of Respondent touching, rubbing, sitting too close to, and squeezing A-1, and any other framing in the Tenure Charges of improper physical contact or prohibited treatment involving A-1, are not substantiated, and those Specifications are dismissed.

A-3

A-3's claims are especially alarming and properly were taken seriously by the School District. It cannot be overstated that the persistent, often prolonged, and always unwanted and uninvited physical contact from an adult male teacher described by A-3 is presumptively and inherently improper. A-3's allegations of such conduct by Mr. Levesque required an immediate response by the School District. Teachers occupy a position of trust, responsibility and authority. The requirement they observe strictly the personal boundaries of their students is embedded in public policy.

However, taking seriously a child's alarming reports of being touched, massaged and stalked by her teacher during classroom instruction does not require blanket acceptance of those allegations as true without a good faith, unbiased and thorough assessment by the School District of the accuracy and truthfulness of the child's claims. Here, the School District

took seriously A-3's allegations of improper touching and possible abuse by Respondent, as was required, but the Investigation Committee, and ultimately the School District, failed to satisfy rudimentary requirements for fairly evaluating the trustworthiness of A-3's claims.

The result here was an investigation which was deeply flawed and woefully incomplete, leading the School District to bring Tenure Charges which are not supported. Indeed, the arbitration record demonstrates that many of A-3's allegations are demonstrably false, others are implausible to the point of not being believable, and still others, which cried out for corroboration based on A-3's assertion the incidents she described occurred in full display to an active classroom full of children and other teaching staff, were never tested by the Investigation Committee, as by simply asking the children who sat next to or across from A-3, or other students whose assigned seats had them facing A-3's desk cluster, what they saw.

As previously noted in this Decision, the Investigation Committee met with A-3 on October 19, 2022. She told the Committee that Respondent, "was always hanging out with me by being behind me . . . since the second week of school." Board Exh. 25 at 16 (emph. supp.). I just kept thinking that was his favorite spot." Board Exh. 25 at 16. A-3 added that Mr. Levesque "nonstop stares at me, but he is always looking at me,"

Id. at 18 (emph. supp.).

Additionally, A-3 showed the Committee how Mr. Levesque, during "most classes," purportedly placed both of his hands on her shoulders, and then massaged them with his thumbs. Id. Over time, according to A-3's report to the Committee, Respondent's attentions turned to her left knee, and eventually he "worked up to [her] thigh." Id. at 17. She stated she wondered to herself, "how much longer can he do this and where else is he going to go?" Id. A-3 told the Committee, Mr. Levesque "would only do it when Ms. Castellini would be teaching and she wouldn't see it." Id. at 16.

As described by A-3 to both the School District's and the State's Investigators, there was nothing subtle about Respondent's alleged behavior. Indeed, when she met with IAIU Investigator Taflinski on October 21, 2022, she told him she had four (4) classes per week with Respondent, and that he stared at her from behind and then proceeded to massage her shoulders "almost every class." Joint Exh. 2, Report at 5. She insisted that Respondent "would have this one spot where he would just stand." Id. Claiming she felt Respondent's presence behind her, A-3 told Mr. Taflinski she would turn around and "Mr. Levesque would keep looking at her and just smile." Id. She informed Mr. Taflinski how Respondent kneeled next to her and place his hand on her thigh, and that when she would try to move her leg out of

his reach, he was blocked by a metal bar of the desk, and thus could not "get his hand off her leg." Id.

Yet, there is not a single student witness to any of A-3's allegations. A-3 did report to the Investigations Committee that there were girls who could corroborate her claims that Respondent "is touching my shoulders all the time." Board Exh. 25 at 18. A-3 apparently was asked to identify "the girls" and she responded "I don't know the girls' names but it's really creepy." Id. Given the ease with which Ms. LaForgia and Dr. Calderon could have helped A-3 identify the girls, such as by showing her a class list, a seating chart, photographs of the other twelve (12) girls in 9th period Social Studies class, or even simply walking with A-3 to the cafeteria to point the girls out, I conclude the Committee abandoned any attempt to identify the witnesses claimed by A-3 for the simple reason the witnesses do not exist. A-3's promise of witnesses turned out to be a dead end. I conclude that is so because A-3's claim there were girls who witnessed Respondent touch her was purely an invention by A-3, as was the representation she gave to Mr. Taflinski that there were "other girls" who told her they too had been touched by Respondent on their knee. Joint Exh. 2, Report at 6.

As with A-3's claimed inability to recall the names of the girls who said they had witnessed Respondent "touching my shoulders all the time," Board Exh. 25 at 18, A-3 similarly had

amnesia when she was asked to identify the "other girls" who told her Mr. Levesque also rubs their shoulders and puts his hand on their knee. Joint Exh. 2, Report at 6.

A-3 told Mr. Taflinski Respondent's shoulder massages would each last 30 seconds. Joint Exh. 2, Report at 5-6. So, too, she recalled, his hand would linger on her knee or thigh for 30 seconds. Id. A-3 explained to the IAIU Investigator that Ms. Castellini nevertheless could not see what Mr. Levesque was doing because Respondent would touch her when Ms. Castellini either is sitting behind a computer or is out of the classroom. Id. at 5.

At arbitration, A-3 repeated her allegations Respondent routinely touched her during 9th period Social Studies class, starting at the beginning of the 2022-2023 School Year, and continuing until Mr. Levesque was placed on leave in mid-October. She recalled he touched her shoulders with his thumbs "maybe once or twice a week," 5:11, initially deviating from her previous assertions it happened "most classes" (Board Exh. 25 at 17); but later she recalled that the shoulder massages occurred "virtually every class," and "always when Ms Castellini was teaching," 5:62-64, 95.

I do not believe it is possible Ms. Castellini, while teaching, could have missed Mr. Levesque in "virtually every class" constantly staring at A-3 from his "favorite spot" a short distance away, and then for 30 second intervals, massaging A-3's

shoulders. Ms. Castellini was A-3's Special Education Teacher. She also was the Special Education Teacher for at least two of the other three (3) students at A-3's desk cluster, meaning Ms. Castellini was the assigned teacher for three (3) of the four (4) students in A-3's group.³⁹ A-3's claim that Ms. Castellini, while leading class, did not notice Mr. Levesque regularly and for long stretches massaging A-3's shoulders is not believable.

I do not credit A-3's assertion Ms. Castellini's sight lines were blocked by her computer, Joint Exh. 2, Report at 5, or by a tall student seated at the desk cluster across from A-3. 5:17, 56. Ms. Castellini credibly testified she was especially focused on her IEP students, including A-3. 4:127. She routinely monitored their progress in the classroom, keeping them engaged, and she modified their assignments, as necessary. 4:72. I am convinced Ms. Castellini did not observe Respondent touching, massaging and hovering around A-3 for the simple reason none of that alleged behavior took place.

In any case, A-3's claim Ms. Castellini's view of A-3's seat location was blocked a computer or a tall student easily could have been tested by the Investigation Committee if Ms. LaForgia and Dr. Calderon had made a brief visit to Mr. Levesque's classroom to observe the layout and the seating arrangement. There is no evidence they did so. Instead, they elected to

³⁹A-3 recalled S-10 and S-47 sat at her desk cluster. 5:40-41. Both had IEPs. See Board Exh. 39.

credit A-3's allegations without performing any verification.

Moreover, A-3's testimony that Respondent prevented Ms. Castellini's discovery of his persistent and lingering placement of his hands on A-3's knee and thigh by concealing himself in a crouch next to her chair makes no sense. I have no doubt other students would have noticed their teacher kneeling next to a female classmate's thigh, and if they somehow missed that, they would have noticed when he would "immediately get up" from his crouch, anytime he suspected he might get caught, hardly a subtle movement. 5:100. See also Joint Exh. 2, Report at 16 (Respondent "would get up immediately [and] walk away). Board Exh. 25 at 16. There is no record evidence any of A-3's classmates observed any of the conduct by Mr. Levesque A-3 described.

The absence of a single student witness to the behavior by Respondent that A-3 has alleged, including those students who sat next to or near her, as well as numerous students who, the class seating diagram shows, Exhs. R-1, R-14, had unimpeded views of Mr. Levesque's "favorite spot," is a compelling evidentiary basis to disbelieve A-3's claims. The absence of any witnesses to the conduct by Respondent which A-3 described is stunning, given the School District's multi-week investigation and a parallel investigation by the State. In each inquiry, the Investigators had unfettered opportunity to question any students in the Middle

School regarding any observations, experiences or conversations related to Mr. Levesque.

A-3 attributes Ms. Castellini's failure to see Respondent massaging her thigh and knee on twenty-one (21) of approximately 24 school days over a six-week period, to Mr. Levesque's guile. According to A-3, Respondent successfully avoided detection by constantly "look[ing] back" to "check to see" where Ms. Castellini "was focusing" while he caressed A-3's leg, 5:55. In short, according to A-3, while Mr. Levesque was rubbing her upper leg, he also "was either looking at me or Mrs. Castellini." 5:86. Plainly, if Mr. Levesque, from his kneeling spot next to A-3's thigh, was able to monitor where Ms. Castellini was looking, I must conclude Ms. Castellini could see him too, and she would have noticed something very unusual, improper and shocking happening between Respondent and A-3. Ms. Castellini, however, has consistently maintained she saw nothing akin to what A-3 alleges.

Ms. LaForgia and Dr. Calderon reflexively discounted those denials and simply decided Ms. Castellini is a liar. 1:165, 2:153, 3:36. I disagree. My assessment of Ms. Castellini is that she was an honest witness. Her testimony persuaded me she is a deeply caring educator. There is nothing in her work history or otherwise in the hearing record even remotely suggesting she would seek to conceal from the School's

Administrators, and from the District, and also from a child's parents, her daily observation that a male teacher was harming an 11 year old girl by giving her constant shoulder massages and frequent thigh and knee caresses, especially if that girl was a vulnerable Special Education student under her direct tutelage and care.

I am persuaded that if Mr. Levesque in fact stared at A-3 daily, from "his spot" behind her, and for long periods of time, as A-3 claims, then Respondent also would have been staring squarely into the eyes of S-47, who sat directly across from A-3, facing her from only a few feet away. If Respondent was staring at A-3 from behind, as she claims, S-47 would have seen Mr. Levesque looking straight back in his direction. I find no record basis to conclude S-47 would not have noticed Mr. Levesque, nearly every day for several weeks, staring at him from behind A-3, the girl who sat directly facing him. Were A-3's descriptions of Mr. Levesque's odd and persistent stares truthful, I cannot envision that one of the two boys sitting directly across from her, especially S-47, would not have observed Respondent repeatedly hover near his desk cluster and then walk up to the girl facing him from just a few feet away, and give her a lengthy massage. That is so improbable, it is not believable.

And, yet, the Investigation Committee, faced with the

challenge of proving that the implausible was probable, inexplicably did not interview any of the students who sat at A-3's desk cluster, including S-47. If Ms. LaForgia and Dr. Calderon did not believe Ms. Castellini, why did they not at least question S-47, the one person in the classroom who could have substantiated A-3's allegations, if they were true?

I hasten to add that S-47 was assigned a dedicated one-on-one Aide, Ms. Marsico, 5:41, and she, I am convinced, also would have seen Respondent hovering around A-3 and rubbing her shoulders if A-3's testimony were truthful. Ms. Marsico testified at arbitration that during Mr. Levesque's 9th period Social Studies class, she either was with S-47 at his desk, which touched and faced A-3's desk, or she was stationed elsewhere in the classroom where she could monitor S-47. See 3:125-28. It is inconceivable, given Ms. Marsico's broad responsibility to monitor and assist S-47 throughout the school day, and given her demonstrated observational skills, 3:126-28, 131-33, that she would have missed seeing Mr. Levesque loiter behind A-3, and squarely in front of S-47, for long periods of time every class, if A-3's testimony was truthful.

Ms. Marsico's testimony was forthright and honest. She persuaded me that her focus and attention on S-47 was so substantial, she could not have missed seeing Respondent staring in A-3's direction in a manner which would have appeared to any

observer that he also was staring at S-47, who was her charge. Nor, do I believe, based on Ms. Marsico's testimony, and my assessment of her professionalism and character, that she would have hesitated even for an instant to confirm A-3's allegations were they truthful, regardless of any impact detrimental to Mr. Levesque.

The Investigation Committee also did not deem it necessary to speak to the unidentified boy who sat next to S-47, see 5:38, who likewise would have been directly facing Mr. Levesque while he purportedly stared at the back of A-3's head from a short distance away. Id. Nor, did the Committee consider it worthwhile to call any of the 9th period students already interviewed (A-2, W-1 and W-2) back for further questioning on whether they had ever noticed Respondent hovering near A-3's desk, or massaging her shoulders or kneeling next to her while caressing her leg. Plainly, none of those 9th period students had noticed Mr. Levesque being oddly focused on A-3, staring at her back, while he was giving class instruction. W-1 and W-2, both 9th period students who had made vague allegations to the Investigation Committee about Respondent touching and rubbing unnamed girls' shoulders, did not make any claims related to A-3 and, in fact, did not even mention her. In any case, they could have been called in for additional questioning, but were not.

According to the arbitration record, the students in Mr.

Levesque's 9th period Social Studies class had many reasons to focus on what he was doing during instruction, whether because he was an effective and highly animated teacher, or because he did surprising things like head stands and knighting ceremonies, or possibly because rumors from older students made the 6th graders wary of his "weird" history and thus more watchful of his activities than they would be of another teacher. Yet, other than A-3's uncorroborated statements, there is no evidence offered by or obtained from any Fall 2022 9th period Social Studies students which supports a finding Mr. Levesque paid any excessive or otherwise improper attention to A-3, either by touching her, staring at her or speaking to her.

I am persuaded further, from studying the layout of desk clusters in Mr. Levesque's classroom, Respondent Exh. 1 and Exh. 4, that any repeated, unusual or suspicious behavior by him in 9th period Social Studies class would have been observed by any student in class paying even moderate attention to their teacher. And, yet, contrary to such expectations, Ms. LaForgia and Dr. Calderon never determined to consult the seating chart to identify the students who had unimpeded views of A-3 while she was seated at he desk. The Investigation Committee made no arrangements to interview any 9th period students about whether they saw Respondent routinely spend an inordinate amount of time - long periods nearly every day, in fact - hovering around A-3,

or about whether they ever saw him massage A-3's shoulders, arms and/or leg, or pop up unexpectedly from a concealed kneeling spot next to her seat.

Such inquiry was a necessary component of a full, fair and committed search for the truth in this case, especially after A-3 claimed a group of girls had volunteered that they could corroborate her allegations. I am compelled to consider that the Investigation Committee decided against making a full and uncompromising inquiry because they were not interested in student recollections which might refute A-3's disturbing narrative about Mr. Levesque.

That refutation might have come most decisively from S-10, the girl who was seated immediately to A-3's right while Respondent purportedly crouched close to and massaged A-3's left leg on more than twenty (20) occasions. A-3's claim that she was unable to alert S-10 to Mr. Levesque's obviously bizarre presence on the floor next to her is preposterous, and the only way I might be dissuaded from that conclusion would be if I convincingly heard from S-10 it was plausible she did not notice Respondent's nearby presence on more than 20 occasions. But I did not hear from S-10, who was never interviewed and did not testify.

In short, this record gives me grave doubts A-3 was telling the truth in her allegations against Mr. Levesque of improper

physical conduct, and the School District failed to present a single witness to assuage those doubts. I do not credit any of the Specifications in the Tenure Charges based on A-3's statements and testimony, including her allegations of prohibited treatment in the way Respondent spoke to her and looked at her. Given my serious reservations about A-3's honesty and reliability, I simply do not credit her testimony. I therefore find the allegations of conduct unbecoming in the Tenure Charges related to A-3 to be unsubstantiated, and they are dismissed.

A-4

Similarly, I find , after a very detailed review of the hearing record, A-4's allegations Respondent touched and rubbed her shoulders and arm, as well as her hand, every school day, to be untruthful. I reach this conclusion following my very careful review and analysis of her hearing testimony, and of the statements she made to the Investigations Committee and to the IAIU Investigator.

A-4 testified Respondent placed a hand on her shoulder or her arm, and "maybe" gave her "like a little rub" when she needed help, typically with her Chromebook. 5:180-83. A-4 added that while Respondent looked at her Chromebook, "he would put his hand on my hand." 5:183. A-4 alleged the touching by Mr. Levesque occurred every class period , 5:193-94, and it happened when she asked for help with her Chromebook or with some other assignment.

5:193-95, 198. A-4 testified Respondent checked everyone's work, but he only touched her. 5:194-95.

A-4 told Ms. LaForgia and Dr. Calderon on October 19, 2022, that Mr. Levesque "touched her shoulder and rub[bed] down her arm . . . whenever he is by me . . . almost every class," Board Exh. 25 at 19. Two (2) days later, on October 21, 2022, A-4 told IAIU Investigator Taflinski that Respondent placed his hands on her shoulders and rubbed them "almost everyday while asking her how she was doing." Joint Exh. 2, Report at 7. A-4 told Mr. Taflinski that Mr. Levesque rubbed her shoulders three (3) out of every four (4) classes, and "maybe 20-30 times since the beginning of the School Year." Id. She did not tell either the Investigation Committee or the IAIU Investigator that Respondent ever put his hand on hers. In fact, and contrary to her hearing testimony, A-4 told Mr. Taflinski that Respondent never touched her anywhere but her shoulders. Id.

Although A-4 insisted in her arbitration testimony that Respondent touched her only when he was at her desk privately giving her help, 5:180, 198-99, she told Mr. Taflinski that he touched and rubbed her shoulders while he was teaching class ("almost every day . . . when Mr. Levesque is talking to the students"). Id. So, too, A-4 told the Investigation Committee "everyone thinks I'm overreacting." Board Exh. 25 at 19. That statement is a plain declaration by A-4 she had spoken to other

students about Mr. Levesque. Yet, A-4 insisted at arbitration that she had never discussed Mr. Levesque touching her with "any of the other kids," 5:186, including the students who told her she was overreacting. 5:191. A-4 did offer in her interview by the Investigations Committee that included among the classmates who told her she was "overreacting" were S-6, S-7 and S-8. The Committee, however, did not question any of those three (3) students, despite knowing they each spoken to A-4 about her "overreaction" to Mr. Levesque, if only to find out what she was reacting to. The Investigation Committee did not question any of the students in A-4's 8th period Social Studies class to find out what it was that "everyone" saw.

If what A-4 told Ms. LaForgia and Dr. Calderon on October 19, 2022, and what she told Mr. Taflinski two (2) days later on October 21, 2022, was all true, that would mean Mr. Levesque had touched her shoulders and rubbed her arms "almost every class," "whenever he [was] by me," "three out of the four" classes she had with him every week, and "20-30 times" from the beginning of the School Year until Mr. Levesque was placed on administrative leave. Board Exh. 25 at 19, Joint Exh. 2, Report at 7. Moreover, at arbitration, A-4 testified Respondent would touch her shoulder and arm (and her hand), 5:183, when four (4) or five "kids" were "seated around her." 5:184. It makes no sense, I find, and simply is not believable, that none of the students

seated around A-4 saw the constant, daily touching and rubbing of her shoulders and arms by Mr. Levesque.

Ms. LaForgia and Dr. Calderon had full opportunity and ability to speak with all potential witnesses, including S-6, S-7 and S-8, 5:184-85, as well as any of the other students in Period 8 Social Studies who at one time or another were seated in any one of the clusters of 4 or 5 students surrounding A-4 during the 20 to 30 times Respondent touched A-4's shoulders and arms. The fact not even one (1) witness to what A-4 described was ever interviewed, much less identified by the Investigation Committee, and no student witness to the conduct by Respondent described by A-4 in her testimony or in her statement to the Investigators testified at arbitration, persuades me that what A-4 alleges, the nearly daily touching and/or rubbing of her shoulder and arm, is unsubstantiated.

Further, I am compelled to assess A-4's testimony in conjunction with A-2's credible assertion that A-4 was one of a group of girls who, along with A-1, spoke about starting a rumor Mr. Levesque had touched A-2's butt, and who spoke about Respondent being a pedophile. Board Exh. 25 at 14.⁴⁰ I find A-4

⁴⁰A-2 told Ms. LaForgia and Dr. Calderon during her October 19, 2022, interview by the Investigation Committee that A-4 spoke about starting a rumor that he touched A-2's butt. At arbitration, At arbitration, A-2 recalled A-4's participation in that "rumor" conversation, 5:274, and importantly did not disavow her prior allegation about A-4's involvement, even though A-4 is now one of her best friends, 5:244.

was untruthful at arbitration when she denied knowledge of any conversations among any of the 6th grade girls concerning Respondent. 5:188. Indeed, A-5 testified she recalls hearing A-4 talking to other girls about Mr. Levesque. 5:156.⁴¹

I am persuaded as well that A-4 lied when she testified Respondent was not mentioned when she spoke with A-2 on September 9, 2024, about coming to the High School on September 10, 2024, for this hearing. 5:215. A-2 testified truthfully, I find, that she and A-4 did speak about this case on September 9, 2024, and A-4 in that conversation told A-2 that Respondent should be terminated. 5:280.

In short, I find A-4 was not honest in her hearing testimony. I do not believe her claim she has never discussed Mr. Levesque and her allegations against him with any student. She hid from inquiry one such conversation she had with A-2 the day before arbitration, in which she told A-2 she hopes Mr. Levesque loses his job. So, too, A-4's hearing testimony

⁴¹A-5's testimony she spoke with A-4 and A-2 about things she "heard" about Mr. Levesque, but did not know about from her own experience, 5:156, is consistent with A-2's testimony, 5:242, 274, (and her report to Ms. LaForgia and Dr. Calderon, Joint Exh. 25 at 14), that a group of girls which included A-1 and A-4, and possibly A-5, had discussed starting rumors about Mr. Levesque. Also consistent with A-2's allegations about there being a rumor mill is A-5's testimony that various girls, over a 3 week period before Mr. Levesque was removed from his teaching duties, spoke about his alleged "behavior in the classroom," which included bragging by some that "they kicked him out." 5:146. As noted above, Ms. LaForgia and Dr. Calderon did not deem A-2's report of girls plotting to invent damaging allegations against Mr. Levesque worthy of being looked into.

Respondent regularly placed his hand on her hand while he reviewed her Chromebook is new, and I do not believe it. On account of A-4's dissimulation, I do not rule out the connection between her desire for a particular outcome in this proceeding, and her decision the day after stating that desire to embellish her prior allegations with the new, and more serious, claim Respondent would routinely touch her hand.

In addition, I find the District's investigation of W-4's allegations was woefully inadequate and incomplete, and consequently unfair to Respondent. One result of the Investigation Committee's failure to identify and speak to students who credibly could have confirmed or disputed A-4's allegations is that I have not heard from students who were seated an arms length from where Respondent, on a near daily basis, allegedly was touching and rubbing A-4 on her shoulders and arms (and now, apparently, also her hand).

Especially troubling is the Committee's failure to question students S-6, S-7 and S-8, who A-4 said were classmates who told her she was "overreacting." I am extremely doubtful any 6th grader would have told A-4 she was "overreacting" if what they had been told about or had seen was Respondent touching and massaging A-4's shoulders and arms on a daily basis, as A-4 has alleged. And, if S-6, S-7 or S-8, who sat with A-4 at her desk cluster, 5:184-85, would corroborate her allegations about

Respondent's daily and easily observed touching and massaging, it makes no sense the Committee did not interview them, given its strong interest in prosecuting these Tenure Charges. From the evidence presented in this proceeding, I must conclude there are no witnesses to Respondent's alleged very public touching and rubbing of A-4, and that is so because it did not happen.

The decision of the Investigation Committee against even attempting to identify and speak to students who would have witnessed the events described by A-4, and therefore might have testified the incidents never happened, leads me to conclude Respondent was not the beneficiary of a full, fair and impartial investigation.

For the foregoing reasons, I do not credit A-4's testimony and I find her allegations against Respondent are unsubstantiated. Accordingly, I dismiss the Specifications in the Tenure Charges which are based on statements and testimony of A-4.

A-5

Based upon my careful review of the hearing evidence, I find A-5, a student in Respondent's 4th period Social Studies class in the early Fall of 2022, did not testify truthfully. I thus disbelieve her allegations Respondent "repeatedly" rubbed her shoulders and back, "probably like every other day," particularly when she gave the correct answer to questions Mr. Levesque had

posed to the class. 5:110-13.

I disbelieve A-5's allegations because her testimony is incompatible with common sense, and is inconsistent with statements she gave to investigators, as well as with others she made at arbitration. Further, as is the case with other accusers, the Investigation Committee decided against interviewing students in A-5's Social Studies class who could confirm (and also possibly refute) her allegations, including one student, S-9, who sat next to A-5 and, according to A-5, not only observed directly the conduct by Respondent which A-5 described, but also was a victim of that very same conduct.

A-5 told Ms. LaForgia and Dr. Calderon on October 19, 2022, that Respondent also "sometimes" rubs the shoulder and back of S-9. Board Exh. 25 at 21. Two (2) days later, A-5 contradicted herself and told Mr. Taflinski "that she has never seen Mr. Levesque doing anything like that (rubbing a girl's shoulders and back) to other female students before." Joint Exh. 2, Report at 7. A-5 testified she told the truth to both the IAIU Investigator and the Investigation Committee. 5:110, 117. Obviously that assertion was itself untruthful.

At arbitration, A-5 testified, "when we got like questions correct, then it was like caressing like the shoulder and like the back and it was like kind of gentle, but it happened repeatedly." (emph. supp.) 5:110-11. A-5 testified that the

"we" included S-9, who was the only girl she could recall being in her same desk cluster. 5:114. At arbitration, A-5 testified that S-9 sat next to her in Social Studies class, and she added that S-9 received from Mr. Levesque "the same shoulder rubbing." She explained, "[n]othing really different than that, pretty much the same that happened to me." Id.

Yet, there is no evidence in the record the Investigation Committee ever interviewed S-9. Nor is there evidence the Committee ever informed Mr. Taflinski of A-5's claim S-9 was not only a victim, but also, allegedly, a witness to A-5's touches and rubs of female students in her 4th period Social Studies class. In fact, the record is devoid of any evidence Ms. LaForgia and Dr. Calderon ever even attempted to speak with S-9, who sat at the same desk cluster as A-5, and whom A-5 identified as a victim of the conduct unbecoming at the core of these Tenure Charges.

A-5, moreover, failed to even mention S-9 to IAIU Investigator Taflinski when she was interviewed by him on October 21, 2022, just two (2) days after she had told the Investigation Committee that Respondent "sometimes" touches and rubs the shoulder and back of S-9. Cf. Joint Exh. 2, Report at 7, and Board Exh. 25 at 21. A-5's failure to tell Mr. Taflinski about S-9 was not an oversight. Indeed, the IAIU Investigator made the following entry: "A-4 stated that she has never seen Mr. Levesque

touching other girls before." Joint Exh. 2, Report at 7.

The Investigation Committee's lack of curiosity was not limited to its failure to follow up with S-9. Ms. LaForgia and Dr. Calderon did not seek to identify and speak to the other students at A-5's desk cluster who, I am persuaded, based on A-5's description of the frequent and open manner in which Mr. Levesque allegedly touched her, would have observed his "repeated" physical contact with A-5's shoulder and arms, and with S-9's, had it occurred as A-5 alleged.

A-5 recalled the names of two (2) students other than S-9 who sat at her desk cluster. The hearing transcript, 5:141, uses first initials because those students had not been assigned "S" codes. My hearing notes and a transcript entry, see 5:142, indicate that A-5 identified S-36 as the girl who sat directly across from her in her desk cluster. 5:141. S-36 testified at arbitration. She was called by Respondent. She stated she did not remember seeing Mr. Levesque touch anyone or have any physical contact with any students. 7:39.

I credit S-36's testimony, notwithstanding the two (2) years time which had passed when she testified on November 1, 2024. She gave honest and forthright responses. Her testimony she does not remember seeing Respondent touch anybody supports my decision against crediting A-5's allegations. Indeed, I am persuaded the conduct by Respondent described by A-5 would have been observed

by S-36, because the two girls sat across from each other in the same desk cluster.

The actions by Mr. Levesque which A-5 described is not conduct likely to have been ignored or forgotten by a 6th grade child who witnessed it. I add that it would not be fair to Respondent if I declined to credit the testimony of S-36 on account of the passage of time, her faded memory and the absence of any previous statements.⁴² The Investigation Committee had compelling reason and unrestricted opportunity to interview S-36, but decided against doing so. That decision is why there is no contemporaneous account from S-36.

Moreover, as described by A-5, Respondent touched and caressed her shoulders and back while he was giving instruction to the class. I fairly conclude the eyes of most, if not nearly all the students, were focused on Mr. Levesque while he gave that instruction, and thus, according to A-5, the shoulder rubbing and caressing with which he rewarded her correct answers to his questions would have been witnessed by many students, and possibly the entire class. Indeed, it is well-established in this record that Mr. Levesque had a very active, even "passionate" teaching style, Board Exh. 25 at 29, 30, 31, which captured students' attention, and which the students might even

⁴²S-36 does not recall how the desks were arranged in Mr. Levesque's classroom, nor does she remember who sat next to her. 7:40.

have seen as "outlandish." Id. at 29. Ms. Castellini described him as "vibrant [and] very alive." 4:129. A-2 described him as "fun" and not boring. Id. at 14.

A-5, moreover, testified that Respondent touched her and rubbed her shoulder and back while he was teaching and asking questions, which he did "in front of everybody," 5:154. His style of engaging Social Studies class with questions that the students were called on to answer, as described by A-5, required that the children pay attention. 5:163. Moreover, according to A-5, if the students sitting across from her merely looked up, reasonably wondering why their teacher was at their desk cluster, they would have seen Mr. Levesque rubbing her shoulders. 5:140.

Given the foregoing, I am stunned by Ms. LaForgia's and Dr. Calderon's decision against identifying and interviewing the students at A-5's desk cluster. I also do not comprehend the Committee's decision against interviewing other students in the 4th period Social Studies class, if the purpose of the investigation was to learn about Respondent's behavior towards his students, many of whom, at least according to A-5's description of what happened, could not have missed the fact their teacher was giving A-5 shoulder and back rubs whenever she correctly answered one of his questions. That kind of attention is precisely the sort of favoritism children would notice, but the Investigation Committee decided against speaking to children

who credibly might have contradicted A-5's allegations. I cannot imagine that the Investigation Committee would have decided against interviewing students who they expected would corroborate A-5's statements.

Adding to my serious doubts about A-5's credibility is her vacillating testimony at arbitration regarding who in her Social Studies class received attention when they answered questions correctly during classroom discussions. Although A-5 initially maintained she and S-9 were the sole recipients of massages and rubs from Respondent for answering questions correctly, 5:117, later in her testimony, A-5 suddenly recalled that every female student who gave a correct answer would receive a "pet" from Mr. Levesque. 5:151. That would have been a very simple fact for the Committee to verify, were it true.⁴³

Also unbelievable is A-5's claim she told Ms. Androulakis about respondent's behavior two (2) or three (3) weeks before the Committee called A-5 into the office for questioning. 5:122-23. A-5 testified she told Ms. Androulakis in late September that Mr. Levesque was touching her back and shoulders during Social Studies class, and she wanted Ms. Androulakis to "stop it from happening." 5:123. And, yet, according to A-5, three (3) weeks

⁴³A-5 told the Committee, "I see it with S-9 sometimes," Board Exh. 25 at 21, although as noted, she told Mr. Taflinski that Respondent, as far as she knew, only touched her. Joint Exh. 2, Report at 7. At arbitration she testified that Respondent "would pet the female students" who "raised their hand and answered correct." 5:151.

went by and nothing was done about Mr. Levesque's alleged behavior, which continued unabated. 5:128.

I do not credit A-5's testimony. If, in fact, A-5 did speak to Ms. Androulakis and there was no action taken for at least three (3) weeks, as A-5 contends, I can only conclude that A-5 did not tell Ms. Androulakis she was being touched by Respondent. If A-5, as she claims, spoke to Ms. Androulakis in late September 2022 in the hope she would be given a new Social Studies teacher, 5:127, it can only be that the initial allegations A-5 made were not serious enough to require the Administration's intervention. The record persuades me that A-5 thereafter determined that she needed to change her story to something far more egregious, such as Mr. Levesque rubbing her shoulders and arms, if she hoped to be transferred into a different class.⁴⁴

In sum, I find that A-5's claim Mr. Levesque rubbed her shoulders and back in every class, or at least every other class, in full view of every student while he led classroom instruction is not believable. Mr. Levesque, the hearing evidence shows, was

⁴⁴Indeed, after A-5 spoke to Ms. Androulakis, she expected what she told the Guidance Counselor would result in her transfer to another class. 5:127. Several weeks later, she told the Investigation Committee a seat change would not be enough to make her feel comfortable, Board Exh. 25 at 21, and A-5 thereafter further embellish her claim when she spoke to Mr. Taflinski, telling him "Mr. Levesque also would lick his lips while looking at the girls." Joint Exh. 2, Report at 7. Like A-5's other allegations, her claim he lasciviously licked his lips while looking at 6th grade girls is unsubstantiated by any other student and I conclude it is false.

an extremely animated and passionate teacher who commanded his students' attention. It is simply not credible that Respondent, when leading a classroom discussion featuring questions to and answers from the entire class, rewarded A-5, and sometimes S-9, with massages that no other students witnessed.

Also not believable is A-5's claim that Respondent was able to hide his conduct from Ms. Castellini, who by all credible accounts was a very dedicated and caring co-teacher in Mr. Levesque's 4th period and 9th period Social Studies classes. A-5's claim that Ms. Castellini was either not in the classroom or too aloof to witness the daily physical attention Mr. Levesque purportedly gave A-5, and supposedly also S-9, for being good students, is fantastical, and there was no sound basis for the School District to have credited A-5's unsubstantiated and implausible allegation the Special Education Teacher was routinely not present in class, mentally or physically.

In short, A-5 give untruthful reports to the District's and the State's Investigators, and, gave equally false testimony at arbitration. I conclude the Specifications in the Tenure Charges of improper physical conduct and prohibited treatment based upon A-5's allegations are unsubstantiated. They are dismissed.

A-2

With respect to A-2, the Tenure Charges allege Respondent "taps and sometimes rubs her shoulder." These allegations lack

context and are inaccurate, particularly insofar as they assert recurring conduct. The only reliable hearing testimony that Respondent touched A-2's shoulder was A-2's recollection Mr. Levesque "tapped" her shoulder on a singular occasion in which A-2 had her head down on her desk during class instruction and Respondent walked over to check on her. 5:231, 262-63. According to A-2, "my head was down on the desk and he tapped me on the shoulder and asked me if I was okay." Id. She testified it "was a good thing" that Respondent checked on her. Id. at 263. That was the only time Respondent touched her "in any way." Id. at 231.

A-2's testimony demonstrates that Respondent was checking to see if A-2 was "okay" when he touched her shoulder and I am persuaded he did nothing improper. It is undisputed that it may be appropriate for a teacher to touch a child when the child's safety or welfare is involved. 2:66. Plainly, if a child puts his or her head down on a desk during class instruction, it suggests the possibility the child is not feeling well. Checking on the child is entirely appropriate in such circumstances.

The assertion in the Google Docs summary that A-2 said, "sometimes he can rub," is not reliable, as there is no evidence the touch in question was other than a single incident when A-2's head was down on her desk. Whether Respondent checked on A-2 by moving his finger tips in an up and down motion which might be

called a "tap," or moved his fingers side to side as he touched her shoulder, which arguable might constitute a "rub," does not change the fact, shown by the evidence, that the contact was limited and solely intended to check on A-2's welfare.

There is no record basis to find Mr. Levesque was required to check on a possibly sleeping or ill child whose head was down on her desk only by making a verbal inquiry, and that he was prohibited from checking on whether she possibly was sleeping by touching her shoulder. A-2 testified that whatever word she may have used to describe the incident to Ms. LaForgia and Dr. Calderon, be it a "tap" or a "rub," A-2 clarified at the hearing, honestly I find, that the touch was in the nature of a tap, and not a rub.

My reaction to the hearing testimony is that the parties' disagreement boils down to whether Respondent slid his finger tip back and forth on A-2's shoulder like one might use a touchpad, or rather tapped her shoulder like one would a spacebar. A-2 testified, truthfully I find, that she recalls Respondent's contact with her shoulder as being more in the nature of a "tap" rather than a "rub." 5:254. More importantly, she did not experience the incident as anything other than Respondent checking to see if she was okay.

In short, whichever word A-2 used during her interview by the Investigation Committee (and the Committee's notes actually

indicate she used both), I do not find Mr. Levesque acted improperly. There is no record evidence he did anything more than check to see if A-2 might be sleeping, or possibly be ill, in a manner which would not startle her. I find nothing in either characterization of how Respondent checked in on A-2 when she had her head down on her desk to constitute conduct unbecoming.

So, too, with respect to the "knighting" incident, I find no evidence of conduct unbecoming. An educator might disagree with the effectiveness of the described "knighting" incident as an exercise to teach a student to be more respectful to her teacher and fellow students by not talking with friends during class instruction. However, there is no evidence in this record which persuades me Respondent acted outside the bounds of permissible techniques for teaching respect and adherence to the age-old rule, do not talk in class when the teacher is presenting a lesson.⁴⁵

Respondent, perhaps like many teachers, might have chastised A-2 not to be rude and not to disrupt class. Instead, he playfully, and with irony, apologized to A-2 for his having interrupted her conversation with her friends by conducting class instruction, and continuing the ruse, he sought forgiveness by kneeling and asking to be tapped on his shoulders. 5:228-29.

⁴⁵A-2 recalled that Respondent was "talking and teaching a lesson, [a]nd I was like talking over him." 5:228.

A-2 recalled laughing and then tapping Mr. Levesque's shoulders, after which he got up and continued teaching. 5:229.

In A-2's telling of this incident, two things stand out. A-2 learned, without any shaming by Mr. Levesque, that she should not have interrupted class, and, Respondent did not engage in conduct unbecoming.

Non-testifying "Witnesses"

As noted, above, the Tenure Charges assert allegations of conduct unbecoming based on interview statements of five (5) students who did not testify. I decline to sustain any Specifications and/or Charges which are based on the uncorroborated hearsay of students who did not testify at arbitration. This ruling is drawn from principles stated in prior Tenure Charge decisions, and is consistent with the due process required in these proceedings. See, e.g., Matter of Strassle and School District of the Twp of Old Bridge, Agency Dkt. No. 131-5/16 (October 5, 2016, Arb. M Biren) at 4 (hearsay evidence alone insufficient to prove allegation in Tenure Arbitration); see also Matter of Tenure Hearing of Vencenti and School District of Paterson, DOE Dkt. No. 255-14 (June 11, 2014, Arb. H. Edelman). Indeed, the School District does not dispute this principle. See School District Brief at 11-17.

In any case, there is evidence in the non-testifying witnesses' statements to the Investigation Committee and to the

IAIU Investigator that W-1, W-2 and W-3 were less than candid with the investigators.

W-1

W-1, who was a student in Respondent's 9th period Social Studies class, told IAIU Investigator Taflinski she "has seen Mr. Levesque coming from behind and putting his hands on A-1's shoulders and massaging." Joint Exh. 2, Report at 8. This is not believable, for W-1 was not in A-1's 7th period class. In addition, A-1 only an hour earlier had told Mr. Taflinski that Mr. Levesque "never touched her shoulders or massaged them." Joint Exh. 2, Report at 6. By not testifying, W-1 avoided an obviously difficult round of cross-examination, especially since she had not made the allegation she saw Respondent touch A-1's shoulders when she met with the Committee on October 19, 2022, just two (2) days earlier.

W-2

W-2, who like W-1 was in Respondent's Period 9 Social Studies class, similarly told Mr. Taflinski she "has seen Mr. Levesque rubbing other girls' shoulders," specifically naming A-1, id. at 8, who, as noted was in Respondent's 7th period class. Plainly, by not testifying, W-2 like W-1, avoided cross examination on her demonstrably false claim she saw Mr. Levesque massage A-1 during a class she was not part of, and on her failure to have previously mentioned the purported shoulder

rubbing of A-1 to the Ms. LaForgia and Dr. Calderon.

W-3

W-3, too, lied to Mr. Taflinski, telling him, just as W-1 and W-2 had done, that she had observed Respondent massage A-1's shoulders. W-3 added the additional embellishment that she had seen Respondent do it "two times." Joint Exh. 2, Report at 8. However, A-1, less than an hour earlier had told Mr. Taflinski Respondent "never touched her shoulders." Id. at 6. "Mr. Levesque for no reason just came up to [A-1] and massaged [A-1's] shoulders."

Adding further doubt to W-3's truthfulness, I note that when she met with the Investigation Committee on October 14, 2022, she made no mention of seeing Respondent massage A-1's shoulders, Board Exh. 25 at 26, and when she met with the IAIU Investigator on October 21, 2022, she made no mention of improper physical contact by Respondent during group work, although that had been her sole complaint during the October 14th meeting with the Committee. Like W-1 and W-2, W-3 had not reported seeing Respondent massage A-1 before she met with Mr. Taflinski on October 21, 2022. See discussion, supra, at 77-78.

By not testifying at arbitration, W-3 avoided having to face cross examination on whether she, W-1 and W-2 had coordinated their newly alleged and baseless claims they witnessed Respondent massage or rub A-1 on her shoulders. Cf. Board Exh. 25 at 23-26.

Miscellaneous Allegations

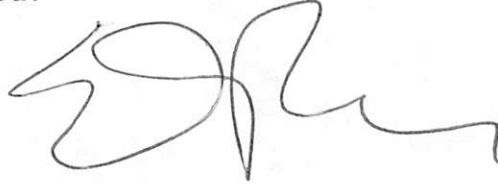
The Tenure Charges allege in para. 50 that Ms. Marsico testified she had seen students get a pat on their backs from Mr. Levesque which they did not like. This allegation is unsubstantiated. Ms. Marsico did recall seeing one male student receive a pat on the back from Respondent on an unspecified date when he answered a question correctly. 3:147-49. She conceded, however, she does not know if that student disliked being patted. Id. Indeed, Ms. Marsico testified that there was no student in the 9th Period Social Studies class who appeared violated or distressed at any point in time by Mr. Levesque. 3:137. She also testified she never witnessed any inappropriate contact by Respondent with any female students. 3:135. Other than "maybe high fives," she never witnessed Mr. Levesque "touch a female student in any way, shape or form." Id. And she never witnessed any favoritism by Respondent towards any of his students. Id. at 137, 139.

Conclusion

Based on the foregoing, I find that the allegations in Charge Nos. 1 and 3 of the Tenure Charges of conduct unbecoming by Mr. Levesque are unsubstantiated, and they are dismissed. Charge No. 2 is dismissed on timeliness grounds.

AWARD

1. Mr. Levesque did not engage in the conduct alleged in the Tenure Charges filed on February 16, 2024.
2. The February 16, 2024, Tenure Charges against Mr. Levesque are dismissed.



August 15, 2025.

Earl R. Pfeffer, Arbitrator

STATE OF NEW JERSEY)
) ss.:
COUNTY OF ESSEX)

On this 15th day of August 2025, before me personally came and appeared EARL R. PFEFFER, Arbitrator, to me known and known by me to be the individual described herein, and who executed the foregoing instrument and who acknowledged to me that he executed the same.

Sworn to and subscribed
before me this 15th day
of August 2025.



Notary Public

